Demurrer

Motion to dismiss

378

Filed

March 21st

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 561.

CLAY GREEN, APPELLANT,

vs.

MARY ANN FISK, WIDOW OF FRANCIS M. FISK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 7, 1879.

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No. 561.

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1 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

MARY ANN FISK
versus
CLAY GREEN ET ALS. } No. 8156.

Transcript.—Filed April 2d, 1877.

STATE OF LOUISIANA,
Parish of Orleans:

Fourth district court for the parish of Orleans.

MARY ANN FISK
vs.
CLAY GREEN ET ALS. } No. 44363.

Petition.—Filed January 29th, 1877.

To the honorable judge of the fourth district court for the parish of Orleans:

The petition of May Ann Fisk, who resides in this city, with respect represents that she was formerly the wife of Francis M. Fisk,
2 now deceased, a resident of this State; that they intermarried on the 27th of June, 1842, in this city, where the matrimonial domicil was established and continued up to the day of the dissolution of said marriage, which was effected by the final judgment of the honorable the sixth district court for the parish of Orleans, on the 10th day of June, 1871, the said judgment of dissolution of marriage now final and irrevocable, and thereby your petitioner was decreed entitled to one half of all the community property held by her said husband as head and master thereof.

Now your petitioner alledges that said community consisted of real estate and movables, and that the real estate held by said community was inventoried by John U. Ogden, notary, under the order of the said sixth district court, on the 6th day of May, 1871, and that she is the owner, by virtue of the atoresaid decree and under the laws of this State, of one-half of said property so inventoried, which she now
3 holds in indivision with the said F. M. Fisk, or his heirs and assigns; that no part of the revenues of said property has been received by your petitioner; that she is unwilling to longer hold said property in indivision, and is desirous that a partition should be made; that said real estate is not susceptible of division in kind.

Petitioner does now further represent that heretofore, viz, on the 5th of September, 1871, she filed her petition for a partition of said real estate in said sixth district court, in the No. 2884 of the docket; that defendant F. M. Fisk filed an exception on the 28th of October, 1871; that said cause did not come up for trial in said court; that subsequently her said husband died on the 12th of December, 1874, and his succession has been opened in the hon. the second district court for the parish of Orleans, under the No. 37663 of the docket, and Mrs. Ann Elizabeth Green was appointed testamentary executrix, and that your

petitioner, in accordance with law, on the 22d of June, 1876, rep-
4 resented the death of said defendant to the honorable the sixth district court, and said court transferred said suit for partition to the said second district court, where said record was filed on 22d of June, 1876, under the number of 38811 of the docket, & where proper parties were made by your petitioner by her supplemental petition, filed on the 4th of September, 1876, viz:

The said executrix, Ann E. Green, Clay Green, who claims ownership of certain of the property set forth in the inventory aforesaid, M. Benner also claiming ownership of a certain portion of said property, and F. M. Fisk and Henry C. Fisk, sons and heirs present of the said F. M. Fisk, and Julien Michel, att'y of absent heirs; that thereafter, on the 20th of September, 1876, the said Clay Green excepted to the jurisdiction of the second district court rational matiane, and the said M. Benner, on the 10th of October, 1876, filed like exceptions, and the said estate of Francis M. Fisk was not owner of any part or portion of the real estate described as the inventory aforesaid, nor as described in
5 the supplemental petition filed in said suit 38811, on the 4th of September, 1876, and that said exceptions, upon these facts coming for trial, a judgment was rendered and signed on the 21st of December, 1876, dismissing said suit from said second district for want of jurisdiction.

Now your petitioner further represents that on said suit 38811 an inventory of the property of which your petitioner is an undivided half owner was taken by order of court on the thirtieth of September, 1876, by Andrew Hero, jr., notary, and that the same was, by order of court in said suit, duly approved and homologated subject to the exceptions of jurisdiction then filed by defendants therein, and which petitioner does now make part of her petition.

She now further that Clay Green, of the State of California, represented in this city by Richard Rhodes, as agent and attorney in fact, claims the ownership of a portion of said property; that one Milton Benner, of the parish of Orleans, also claims of a portion of the
6 property described in said inventory; that your petitioner is an owner of an undivided half interest in all of said real estate, and that she is not willing to continue said joint ownership; that a partition thereof by sale is necessary, as by reason of a change of condition of said property it is no longer divisible in kind.

Wherefore your petitioner prays that Clay Green, through Richard Rhodes, his agent and attorney in fact, and Milton Benner be cited to appear and answer this petition.

And that after due proceedings there be judgment decreeing a partition of said property that the same may be sold by N. J. Hoey, auctioneer, on terms of one-third cash and the balance on a credit of one and two years, with eight per cent. interest, secured by a vendor's privilege and special mortgage, with the usual clause as to attorneys' fees and insurance, and that all parties be referred to Andrew Hero, jr., to complete said partition, and she prays for costs and for all general and equitable relief.

7 (Signed) HORNOR & BENEDICT, *Att'ys.*
(Signed) OGDEN & HILL, *Att'ys.*

Citation to Clay Green.—Issued 29th January, 1877.

MARY ANN FISK
vs.
CLAY GREEN ET ALS. } No. 44363.

STATE OF LOUISIANA:

Fourth district court for the parish of Orleans, in the city of New Orleans.

Mr. Clay Green, through Richard Rhodes, his agent and att'y in fact:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court of the parish of Orleans, on Chartres street, between St. Ann and St. Anthoney alley, in ten days after the service hereof.

Witness the honorable William T. Houston, judge of the said
8 court, the 29th day of January, in the year of our Lord 1877.

[SEAL] (Signed) HORACE BREEDLOVE,
D'y Clk.

Citation to Milton Benner.—Issued January 29th, 1877.

MARY ANN FISK
vs.
CLAY GREEN ET ALS. } No. 44363.

STATE OF LOUISIANA:

Fourth district court for the parish of Orleans, in the city of New Orleans.

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the fourth district court for the parish of Orleans, on Chartres street between St. Ann and St. Anthony alley, in days after service hereof.

Witness the honorable William T. Houston, judge of the said court, the 29th day of January, in the year of our Lord 1877.

[SEAL.] (Signed) HORACE BREEDLOVE,
D'y Clk.

9 *Sheriff's return on citation to Clay Green.—Filed Febr'y T., 15th, 1877.*

MARY ANN FISK
vs.
CLAY GREEN ET AL. } No. 44363.

Received on the 29th Jan'y, 1877, and on the 31st of January, 1877, I served of the within citation and accompanying petition on Clay Green, by personal service on Richard Rhodes, his agent and att'y in fact.

Returned same day.

GEO. H. SCHREIBER,
D'y Sheriff.

Sheriff's return on citation to Milton Benner.—Filed Febr'y 15th, 1877.

MARY ANN FISK
vs.
CLAY GREEN ET AL. } No. 44363.

Received on the 29th of January, 1877, and on the 31st of January, 1877, I served a copy of the within citation and accompanying petition on Milton Benner in person.
Returned same day.
(Signed) GEO. H. SCHRIEBER,
Dy Sh'ff.

10 *Answer of M. Benner.—Filed Feb'y 9th, 1877.*

MARY ANN FISK
vs.
CLAY GREEN. } No. 44363.

In the 4th district court for the parish of Orleans.

Now comes Milton Benner, who resides in this parish, made defendant herein, and for answer denies all ownership of and in the property referred to in the petition herein filed by the plaintiff herein; and further answering, he avers that the apparent ownership of any of said property which once stood in his name has been long since, and long before the bringing of this suit, retransferred to the assignee of F. M. Fisk in bankruptcy, viz., C. W. Goddard.
Wherefore he asked to be dismissed with costs.
(Signed) W. B. LANCASTER, *Att'y.*

11 *Act marked A.—Filed February 10th, 1877.*

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Be it known that on this day of , in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States the (100th) one hundre'th, before me, William Joseph Castell, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Milton Benner, esq., of this city, who declared that, for the consideration hereinafter expressed, he does by these presents grant, bargain, sell, convey, transfer, assign, and set over, with a full guarantee against all troubles, debts, mortgages, evictions, donations, alienations, or
12 other incumbrances whatsoever, unto Charles W. Goddard, esq., of the city and State of New York, assignee of the bankrupt estate of Francis M. Fisk, herein represented by his agent, Charles Henry Washburne, present, accepting, and purchasing for C. W. Goddard, assignee, his executors and assigns, and acknowledging delivery and possession thereof, a certain lot of ground, together with all the buildings and improvements thereon, rights, ways, and advantages thereunto belonging or in any wise appertaining, situate, lying, and being in the first district of this city, in the square bounded by Notre Dame, New Levee, Girod, and Fulton streets, and designated by the number ten on a plan known as the plan of J. A. Beard, duly

certified by Hugh Grant, surveyor, under date of the 12th of January, 1852, and deposited in the office of H. B. Cenas, late a notary public in this city, for reference, measuring twenty-three feet eigh' inches and six lines front on Fulton street, by a depth
13 of one hundred and twenty-one feet seven inches and five lines on the lines which divides it from lot number nine, and one hundred and twenty-one feet nine inches and one line in depth and front on Notre Dame street, being the same property which the present vendor acquired by purchase from C. S. Sauvinet, sheriff of the parish of Orleans, at a sale thereof made by said sheriff, by virtue of a writ of seizure and sale to him directed, the honorable the sixth district court of the parish of Orleans, at the suit of J. Davidson and Hill versus F. M. Fisk, No. 2607 of the docket of said court, the whole as per sheriff deed, dated 7th of August, 1869, duly registered in the conveyance office in this city, in book 100, folio 189, and duly recorded in the clerk's office of said sixth district court, in deed-book No. 5, folios 83, 84, 85, 86, 87, and 88.

To have and to hold the said property and appurtenances unto
14 the said purchaser, said assignee, his executors and assigns, forever.

And the said vendor, the said property and appurtenances herein conveyed to the purchaser or assignee, his executors and assigns, shall and will warrant and forever defend against all legal claims and demands whatsoever.

And the said vendor moreover transfers unto said purchaser all and singular the rights and actions of warranty to which he is or may be entitled, against any and all of the former owners of the property herein conveyed, hereby subrogating the said purchaser in and to the said rights and actions to be by him enjoyed and exercised in the same manner as they might have been by the same vendor himself.

This sale and transfer is made and accepted for the following consideration, viz:

After his said vendor's purchase of said property, the late Mr. Fisk desired to get it back at the same price that said Milton Benner
15 had given for it, to which the said M. Benner consented, and received for said Fisk, or for his account, the said amount of purchase price, viz, the sum of five thousand five hundred dollars, with the understanding that the said Benner should not make the title until released from certain bonds, signed by him, and obligations undertaken by him on account of said Fisk. These obligations being now disposed of satisfactorily to said Benner, he makes this transfer in compliance with said understanding, and makes it to the assignee of said Fisk, as the transaction took place before his (said Fisk's) bankruptcy.

Thus done and passed in my office at New Orleans aforesaid, the day, month, and year first above written, in the presence of , and , witnesses of lawful age, domiciliated in this city, who hereunto sign their names with the parties and me, the said notary, after the reading of these presents.

(Signed) M. BENNER.

STATE OF LOUISIANA,
Parish of Orleans:

16 Be it known that on this day, the eighth of the month of February, eighteen hundred and seventy-seven, before me, William Joseph Castell, a notary public in and for the parish of Orleans,

State of Louisiana, duly commissioned and qualified, personally appeared Milton Benner, who declared and acknowledged the above to be his genuine signature on the fourteenth of July, 1875, of his own free will and accord, for the uses and purposes contained in the above and foregoing act.

Thus done and passed at New Orleans, La., this eighth day of February, eighteen hundred and seventy-seven, in the presence of William B. Lancaster and James J. Woulfe, witnesses of lawful age, who reside in this city, and hereunto sign their names, with said M. Benner and me, notary, after the reading of these presents.

(Signed) M. BENNER.
(Signed) W. B. LANCASTER.
JAMES J. WOULFE.
(Signed) W. J. CASTELL,
Not. Pub.

17 I certify the above and foregoing to be a true copy of the original act, and of the conveyence and mortgage certificates annexed to said original act and extant in my current registry.

In faith whereof I grant these presents under my signature and the impress of my seal of office.

New Orleans, 14th Feb'ry, 1877.

[SEAL.] (Signed) W. J. CASTELL, *Not. Pub.*

I, the undersigned, register of conveyances in and for the parish of Orleans, State of Louisiana, do hereby certify that a synopsis of the original act of which this is a copy was duly registered on the 9th day of February, 1877, in book 106, folio 984, of this office.

New Orleans, March 7th, 1877.

[SEAL.] (Signed) C. B. FISH, *Reg.*

Registered in conveyance b'k 106, fo. 984.
New Orleans, Febr'y 9, 1877.

[SEAL.] (Signed) C. B. FISH, *Reg.*

(Copy.)

18 NOTE.—The register of conveyances will not be responsible for the record of any acts of sale inscribed in book No. 17 of this office, the same having been lost or stolen previous to his taking possession of the office of register of conveyances.

STATE OF LOUISIANA,
Parish of Orleans:

OFFICE OF THE REGISTER OF CONVEYANCES,
New Orleans, July 14, 1875.

The undersigned, register of conveyances in and for the parish of Orleans State of Louisiana, hereby certifies that according to the records of this office, it does not appear that M. Milton Benner has alienated the following property, to wit:

A lot of ground in the first district, bounded by Notre Dame, New Levee, Girod and Fulton streets, and designated by the No. 10, measuring 23′ 8″ 6‴ on New Levee street, 23′ 9″ 6‴ on Fulton street, by 121′, 7″ 5‴ deep on the line of lot 9, and 121′ 9″ 1‴ deep, and front on Notre Dame street.

Acquired on 7th of August, 1871.

(Copy.)

19 STATE OF LOUISIANA,
Parish of Orleans:

OFFICE OF RECORDER OF MORTGAGES.

The undersigned, recorder of mortgages for the parish of Orleans, city of New Orleans, State of Louisiana, certifies that in the records of this office there are no other mortgages standing in the name of Milton Benner, and recorded against a certain lot of ground situate in the 1st district of this city, in the square bounded by Notre Dame, New Levee, Girod, and Fulton streets, and designated by the No. 10, measuring 23′ 8″ 6 front on New Levee street, and 23′ 9″ 6″ front on Fulton street, by a depth of 121″ 7″ 5″ on the line which divides it from lot No. nine, and 121′ 9″ 1″ in depth and front on Notre Dame street—

Than the draining privilege.

B'k 93, fo. 150, August 29th, '71. The mortgage he granted in favor of James G. Gernon, per act of M. L. Ainsworth, notary, dated
20 28th August, 1871, to secure the sum of $5,000 int. and costs.

B 119, fo. 31.—The city taxes for 1873, $315.00. 2 entries.

B. 105, fo. 654, No. 50,407.—Writ issued by supr. dist. court on 2d April, 1874, to pay to satisfy said sum of $315 int., &c., for said taxes.

New Orleans, July 14th, 1875.

[SEAL.] (Signed) C. DARCANTEL, *Dy Rec.*

Act marked B.—Filed Febr'y 10th, 1877.

Sale of property. Estate of F. M. Fisk, bankrupt. To Clay M. Green.

JULY 6TH, 1876.

This indenture, made and entered into this sixth day of April, 1876, by and between Charles W. Goddard, of the city of Brooklyn, State of New York, assignee in bankruptcy of the estate of Francis M. Fisk, late of the said city of Brooklyn, deceased, party of the first part, and Clay M. Green, of San Francisco, State of California, party of the second part, witnesseth:

That whereas the said Francis M. Fisk did heretofore, to wit,
21 on or about the 27th day of December, 1871, present this petition to the district court of the United States, in bankruptcy, for the eastern district of the State of New York, praying, among things, that he might be adjudged a bankrupt, and such proceedings were had thereon, that afterwards, to wit, on or about the 27th day of December, 1871, he was duly adjudged a bankrupt.

And whereas after such adjudication such proceedings were had in said court that the above-mentioned Charles W. Goddard was duly chosen and appointed assignee in bankruptcy of the estate of said Francis M. Fisk, and thereupon, to wit, on or about the 7th day of February, 1872, an assignment of all the estate, property, and effects of said bankrupt was duly made, pursuant to the act of the Congress of the United States, to the said party of the first part; and whereas, under and pursuant to the power and authority vested in him by law and by virtue of such appointment and assignment, said party of the first part did
22 afterwards, and the 6th day of April, 1876, sell at public auction, at the Commercial Exchange in the city of Brooklyn, all the rights, title, and interest which the said Francis M. Fisk had at the time of the filing of said petition in and to real estate hereinafter men-

tioned, due notice of the time and place of such sale being first given according to law and the practice and order of the said court; at which sale all the right, title, and interest of the said Francis M. Fisk, as aforesaid, in and to the property hereinafter described, was struck off to the said party of the second part for the aggregate sum of $650.00, that being the highest sum bidden for the same:

Now this indenture witnesseth that the party of the first part to these presents, in order to carry into effect the sale so made to him as aforesaid, and in conformity with law and the purposes and objects of said assignment, and also in consideration of the premises and of the said sum of money so bidden as aforesaid being first duly paid by said
23 party of the second part, the receipt whereof is hereby acknowledged, hath bargained and sold, and by these presents doth grant and convey unto the said party of the second part and his heirs and assigns all the rights, title, and interest which the said Francis M. Fisk had at the time of the filing of his petition aforesaid in and to the following-described pieces and parcels of real estate situated in the parish of Orleans, in the State of Louisiana, to wit:

1st. Two lots of ground situated in the city of New Orleans known as Nos. 4 and 5, in square 43 (city plan), in the 4th district, bounded by Jackson, Josephine, Fulton, and Rousseau streets, being the same premises described in a certain act before A. Mazureau, dated March 26th, 1866, made by the society for the relief of destitute orphan boys to said F. M. Fisk, and recorded in book 90 of conveyances in the office for the recorder of deeds in said city, at folio 566.

2d. Four lots of ground on the same plan and square, adjoining
24 each other, known as Nos. 11, 12, 13, and 14, being the same premises described in above act of Mazureau, made by said society to said F. M. Fisk.

3d. A lot of ground with the buildings thereon, situated in the 1st district, square 18 (city plan), in said city, bounded by Notre Dame, New Levee, Girod, and Fulton sts., known by No. 10, being the same premises described in an act before E. C. Sauvinet, sheriff, dated August 7th, 1871, and recorded in book 100 of conveyances in the aforesaid office, at folio 189.

4th. A lot of ground situated in the 1st district of said city, known as No. 8, in square 18, on a plan of J. A. Beard, in office of H. B. Cenas, bounded by New Levee, Girod, and Fulton streets, being the same premises described in an act before Theodore Guyol, notary public, dated April 3d, 1862, made by Pat. Irwin to said F. M. Fisk, and recorded in book 87 of conveyances of said parish, at folio 407.

5th. A lot of ground known as No. 9, in same square and plan
25 last above mentioned, being the same premises described in an act before Geo. W. Christy, notary public, dated March 21st, 1866, and recorded in book 91 of records of said parish, at folio 135.

6th. A lot of ground in square 95 known as No. 92 of said square of said city, bounded by Canal, Rampart, Custom-house, and Burgundy sts., in the 2d district, being the same premises described in an act before J. Cuvillier, Feb'y 10th, 1870, recorded in book 97 of said records, at folio 431.

7th. A lot of ground in the 1st district of said city known as No. 1, in square 13, on plan of Castang and Celles, dated March 20th, 1866 (square 574, city plan), bounded by Poydras, Rocheblane, Perdido and Dorgenois sts., being the same premises described in an act before A. E. Bienvenue, dated May 28th, 1866, and recorded in book 92 of the records of said parish, at folio 522, to have and hold all the right, title,

and interest aforesaid of the said Francis M. Fisk, in and to all
26 and singular the premises above mentioned and described, unto the said party of the second part, his heirs or assigns, for his or their own proper use, benefit and behalf. In witness whereof the said Charles W. Goddard, *or* assignee in bankruptcy of the said Francis M. Fisk, hath hereunto set his hand and seal the day and year above mentioned.

(Signed) C. W. GODDARD,
Assignee.

Sealed and delivered in presence of—
CHARLES EDGAR MILLS.
WM. READ.

(Signed) CHARLES NETTLETON,
Commissioner for Louisiana in New York.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 2d day of May, A. D. 1876, before me, Charles Nettleton, a commissioner of the State of Louisiana, in New York, residing in said city of New York, personally appeared C. W. Goddard (assignee), to me well known to be the individual named
27 in, and who executed the following instrument, and acknowledged to me that he did sign and deliver the same as his free act and deed on the day and year therein mentioned, and for the consideration, uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal this second day of May, 1876 A. D.

(Signed) CHARLES NETTLETON,
Commissioner for Louisiana, New York,
No. 117 Broadway, New York City.

NEW ORLEANS, *June 6th*, 1876.

(Signed) C. B. FISH, *Reg.*

I, the undersigned, register of conveyances in and for the parish of Orleans, State of Louisiana, do hereby certify that the within instrument of writing is a true and correct copy of an act registered on the 6th day of June, 1876, in book 107, folio 482, of this office.

New Orleans, March 8th, 1877.

(Signed) C. B. FISH, *Reg.*

28 *Petition for removal to U. S. court.—Filed Feb'y 10th*, 1877.

MARY ANN FISK
vs.
CLAY GREEN ET ALS. } No. 44363.

In the fourth district court in and for the parish of Orleans.

The petition of Clay Green, who resides in the State of California, and who has been made defendant herein, respectfully shows that your petitioner is the defendant in this suit; that the same was brought by Mary Ann Fisk, plaintiff, on or about the 29th day of January, 1877, in the fourth district court in and for the parish of Orleans, in the State of Louisiana, to be held in said parish, in the first judicial district of the said State, and that said *said* plaintiff is, and was at the time of bring-

ing this suit, a citizen of this State, and that your petitioner was then, and now is, a citizen of the State of California; and your petitioner further shows that said plaintiff claims in the petition filed in this
29 cause the ownership of one-half interest in certain real estate in this city and parish, and demand a judicial partition thereof.

And that in said petition she makes a part thereof an inventory taken by A. Hero, jr., notary, in which said inventory said property is appraised at several thousands of dollars, making plaintiff's allegation of her interest to greatly exceed the amount one thousand dollars, and petitioner alleges that the matter in dispute thereof exceeds the sum of five hundred dollars exclusive of costs; that said plaintiff virtually demands a judgment recognizing her as a joint owner in said properties, as well as a judgment of the partition thereof.

That petitioner is the sole owner of said properties by virtue of a purchase thereof from the bankrupt estate of F. M. Fisk, specially set forth in the annexed sketch marked B, made part hereof.

That the said suit is one in which there can be a final determination contraversory so far as it concerns your petitioner, without the
30 presence ofthe other defendant as a party in the cause; that indeed there is no other real defendant, as Milton Benner, made co-defendant in this suit, has filed his answer disclaiming any interest in any of the properties referred to, and as said disclaimer is true for this, that said Benner did retransfer to the said assignee in bankruptcy of F. M. Fisk all and any interest which may have previously been standing in his name in and to a certain piece or pieces of property on said inventory described, and did so long before petitioners purchase thereof as aforesaid; all of which will more fully appear by an authentic copy of said transfer herewith filed and specially made part hereof, (marked A).

That petitioner being therefore the owner of the whole of said property under said sale and bankruptcy, the said claim of plaintiff herein involves rights amounting to over five hundred dollars as afore-
31 said, causing under the laws of the United States providing for proceedings and sales in bankruptcy.

Your petitioner further represents that this suit is not yet at issue, and that he desires to remove the same before the trial thereof into the next circuit court of the United States, to be held in the district of Louisiana, in the 5th circuit, in pursuance of the provisions of law as contained in the acts of Congress approved at different dates, in such cases made and provided. And that he is ready and willing to give such good and sufficient security as the court may direct for his doing all acts and things required to be done by the said provisions of law, upon the removal of a suit into the United States court, and he offers herewith his bond executed by Richard Rhodes, of the city of New Orleans, as surety, in the penal sum of five hundred dollars, conditioned that your petitioner shall enter in the next circuit court of the United States, to be held in the district of Louisiana, in the 5th circuit,
32 on the first day of its session, a copy of the record in this suit and copies of all process, pleadings, depositions, testimony, and other proceedings in this suit, and doing such other appropriate acts as by the said acts of Congress are required to be done upon the removal of suit into the United States court, and for costs as by said acts of Congress provided, as good and sufficient surety according to the said provisions of law, upon a removal of a suit into the United States court.

And your petition'r therefore prays that the said bond may be accepted as good and sufficient surety according to the said provisions of law, and that the said suit may be removed into the next circuit court of the

United States, to be held in the district of Louisiana, in the 5th circuit, pursuant to the statute of the United States in such case made and provided, and that no further proceedings may be had therein in this court.

And your petitioner will ever pray, &c.

33 (Signed) SEMMES & MOTT,
Per W. B. L.

(Signed) W. B. LANCASTER,
Attorneys.

Bond.—Filed Feb'ry 10th, 1877.

MARY ANN FISK
vs.
CLAY GREEN ET AL.

In the fourth district court for the parish of Orleans.

We, Clay Green, of San Francisco, in the State of California, as principal, and Richard Rhodes, of New Orleans, as surety, are held and firmly bound unto Mrs. Mary Ann Fisk, of the city of New Orleans, State of Louisiana, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Mary Ann Fisk, her successors or assigns, for which payment well and truly to be paid we hereby bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, dated the 9th day of February,
34 (1877) eighteen hundred and seventy-seven.

Whereas a suit was brought, on or about the 29th of January, 1877, in the fourth district court for the parish of Orleans, by the said Mary Ann Fisk against the said Clay Green and Milton Benner, and the same is now pending for trial in the said district court and is removable into the circuit court of the United States for the district of Louisiana, in the fifth circuit, under the acts of Congress in such case made and provided; and whereas the said Clay Green has filed his petition in said fourth district court for the removal of said suit into the next circuit court of the United States to be held in the district of Louisiana:

Now, therefore, the condition of the above obligation is such that if the above bounden Clay Green and his legal representatives shall enter or cause to be entered in the said court of the United States, on the first day of its stated session next ensuing, after the order of the 4th
35 district court for the removal of the said suit, into said circuit court, a copy of the record in said suit, copies of all process, pleadings, depositions, testimony, and other proceedings in said suit and cause to be done such other proceedings in said suit, and cause to be done such other appropriate acts, as by the said acts of Congress *or* required to be done upon the removal of a suit into the United States court, and shall pay all costs that may be awarded by the said circuit court, that said court shall hold that said suit was wrongfully and improperly removed thereto, then the above obligation to be void, otherwise to remain in full force and virtue.

(Signed) CLAY GREEN,
Per W. B. LANCASTER. *Att'y.*

(Signed) RICHARD RHODES.

Order of transfer.

Let the petition be filed, and let the order of removal be granted
36 as prayed for, so far as defendant Clay Green is concerned.

(Signed) W. T. HOUSTON. *Judge.*

Certificate.

I, John Curry, clerk of the fourth district court of the parish of Orleans, do hereby certify that the within 41 pages do contain a correct transcript of all the proceedings had, evidence adduced, and documents filed in suit wherein Mary Ann Fisk is plaintiff and Clay Green and Milton Benner are defendants, No. 44363 of the docket of the said fourth district court for the parish of Orleans.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court this 24th day of March, eighteen hundred and seventy-seven, and the one hundred and first year of the Independence of the United States of America.

[SEAL.] (Signed) JOHN CURRY, *Clerk.*

37 Proceedings in the *the* circuit court of the United States, fifth circuit and district of Louisiana.

Default.—Extract from the minutes, April term, 1877.

NEW ORLEANS, *Wednesday, April 25th*, 1877.

Court met pursuant to adjournment.

Present, Hon. Edward C. Billings, district judge.

MARY ANN FISK *vs.* CLAY GREEN ET AL. } No. 8156.

On motion of Hornor and Benedict, att'ys for pl'ff, and on showing to the court that the defendants have failed to answer, altho' duly cited, ordered that judgment by default be entered against them.

Order default set aside.—Extract from the minutes of April 28th, 1877.

MARY ANN FISK *vs.* CLAY GREEN ET ALS. } No. 8156.

On motion of W. B. Lancaster, attorney for defendants, and on
38 filing answer, it is ordered that the default herein entered on the 25th of April instant be set aside.

Answer.—Filed April 28th, 1877.

MARY ANN FISK *vs.* CLAY GREEN ET ALS. } No. 8156.

U. S. circuit court dist. of Louisiana.

Now comes Clay Green, defendant herein, and for answer denies all the allegations of plaintiff's petition, except that defendant claims to be owner of certain property therein referred to except as may be hereafter admitted herein.

And for further answer defendant Clay Green specially avers that he is the sole owner of the whole of the property referred to in said petition of plaintiff, as will more fully appear by reference to his (defendant's)

petition for the removal of this cause from the 4th district court for the parish of Orleans, State of Louisiana, to this court, which petition is specially referred to and made part hereof, and the allegations of
39 which are here renewed and adopted, as also by reference to the answer of Melton Benner, filed in said cause and in said court, and by further reference to the two acts marked "A & B," filed with said petition for removal, which said two acts are herewith filed and made part hereof in all their averments.

That this respondent is entitled to the ownership of certain portions of said property by virtue of an act of transfer by act before W. J. Castell, notary, of date of , herewith filed and made part hereof, marked C.

Wherefore respondent prays that said demand of Mary Ann Fisk be rejected, and that respondent have judgment against her decreeing his title to the whole of said property to be good and valid, and decreeing the ownership thereof to be in him.

This respondent further avers that at the time of the alleged dissolution of marriage by a decree of divorce *of* the said F. M. Fisk was largely indebted, and said debts contracted during the alleged
40 marriage continued to exist and were unpaid at the *the* time said Fisk made a surrender of his property in bankruptcy in the State of New York, and that the property sued for was included in said surrender, and at the time said surrender was made as aforesaid said Fisk and the alleged community were insolvent, and said property was sold by the assignee in bankruptcy to pay community debts, if any such community existed as alleged, and the property sued for was acquired by respondent at sale made by the assignee in bankruptcy, under the order of said bankrupt court, and thereby acquired full and sole ownership of the same.

Wherefore he reiterates his prayer aforesaid, and prays for a decree establishing his ownership as set forth herein, and for general relief.

(Signed) SEMMES & MOTT,
(Signed) W. B. LANCASTER, *Att'ys.*

41 *Note of evidence.—Filed May 20th*, 1878.

MARY ANN FISK
vs.
CLAY GREEN ET AL. } No. 8156.

Complainant offered in evidence the petition in the case of Mary Ann Fisk vs. F. M. Fisk, No. 128, 6th district court, parish of Orleans, filed 22 October, 1868; citation and return on F. M. Fisk, 26 October, 1868; the final judgment in said cause, 10th June, 1881.

The decree for alimony.

Also petition and return to citation in suit 2684, 6th district court, entitled M. A. Fisk vs. F. M. Fisk, filed 11th Sept'r, 1871; the service of citation on F. M. Fisk in said suit.

The inventory by Ogden, notary, 11th Sept'r, 1871, and the order of court transferring cause to 2d district court.

Also the suppl'l petition of Mary Ann Fisk in suit 38811, 2d dist. court, the order of court for an inventory, and the inventory by A. Hero, jr.
42 The exception and answer in suit 38811, 2d district court, and the judgment of the court thereon. Also record succession of F. M. Fisk; the letters of executorship issued to Mrs. Ann Green.

Defendants offer sale of 6th April, 1876, by the assignee of the estate of F. M. Fisk. bankrupt, to Clay W. Green, marked A, and the certificate of its recordation *and the certificate of its recordation.*

Also transfer from Milton Benner to Ch's W. Goddard, assignee, B.

Also sale from E. W. Foster to Clay Green, marked C (Mch. 9, '76).

Also schedules suit 696 of the docket east dist. of New York, marked D.

Also suit Wheeless and Pratt vs. F. M. Fisk, No. 24130, 4th dist. court; the notes and judgment thereon to show the origin and the amount of debt recovered against F. M. Fisk.

Also petition and documents annexed and judgment in suit Fassman vs. F. M. Fisk, 23633, 4th dist. court, to show the origin
43 and amount of debt recovered against F. M. Fisk.

Also petition and documents annexed and the judgment in suit Ansel Edwards vs. F. M. Fisk, No. 10445, 6th dist. court: also certified copy of the judgment in said case, marked E.

Also certificate of clerk 5th dist. court, showing that the records in suit of Farwell & Co. vs. F. M. Fisk, No. 1696, 5th district court , and cannot be found after due search. Certificate marked F.

Complainant offered the certified record in the bankruptcy of F. M. Fisk, No. 1696, east dist. of New York, marked G.

Petition offered by complainant.

Sixth district court, parish of Orleans. No. 128.

Petition.—Filed Oct. 22d, 1868.

MARY ANN FISK
vs.
HER HUSBAND, F. M. FISK.

44 To the honorable the judge of the sixth district court for the parish of Orleans:

The petition of Mary Ann Fisk, wife of Francis M. Fisk, residing in the city of New Orleans, respectfully shows:

That on the 27th day of June, 1842, petitioner was married to the said Francis M. Fisk; that since the said event she has been to him an affectionate, faithful, and obedient wife; that he, on the contrary, treated her almost constantly with great severity, harshness, and brutality; that he has been utterly faithless to her; that he frequently performed open acts of adultery in their common dwelling with different persons; and he frequently committed excesses upon the person of petitioner by striking her and threatening to take her life, as instances whereof it will be sufficient to cite the following facts, which petitioner expects to prove upon the trial of this cause.

Petitioner represents that in the year 1852, on the 9th of December, at the matrimonial domicil at the corner of Julia and Baronne
45 streets, her said husband, compelled by motives of munificence towards his courtesans, broke open petitioner's armoir and took therefrom jewelry of her own; that upon her expostulations with him he seized and beat her, endangering her life; that he struck her with his clenched fist, and that when petitioner lay bruised and bleeding upon the floor he kicked and stamped her person.

Petition further represents that in consequence of said injuries she

was confined to her bed during a period of two weeks, under the professional attendance of Dr. Tiffin, a physician then practicing in this city.

Petitioner further represents that on the 17th of November, 1863, the said F. M. Fisk returned from a visit to the North, and brought with him a girl named Addie Budlong, whom he placed into the family domicil and lived in open and avowed concubinage with her.

Petitioner represents that her said husband has, besides the outrages above mentioned, performed frequently acts of adultery in the
46 common dwelling, and often ill-treated her, all of which will more fully appear upon the trial of this cause.

Petitioner further represents that two male children, now of age, are the issue of said marriage with her said husband. Petitioner further represents that she first instituted suit for a divorce against her said husband in June, 1855, but her attorney, without her knowledge and consent, discontinued said suit; that her husband ever since has failed to give her support.

Petitioner further represents there is a community of property existing between her and her said husband.

Wherefore she respectfully prays that she be authorized to sue her said husband, that he be cited according to law, and that all due proceedings had, a decree of divorce a vinculo matrimoni be rendered, that petitioner be adjudged her share of the acquests and gains acquired during said marriage; and that pending this suit this honorable court order the provision of a suitable domicil (to wit, 157 Camp street)
47 for her, and that she be allowed a sum for her maintenance proportioned to the means of said defendant, and for all reasonable and equitable relief she will ever pray.

(Signed) DAVID GOLDMAN,
Att'y for Plaintiff.

Order.

Let the petitioner be authorized to institute this suit and prosecute this suit, and during the pendency of this suit let the residence of No. 157 Camp street be assigned to her as her domicil.

New Orleans, Oct. 22d, 1868.

(Signed) W. H. COOLEY, *Judge.*

Citation and return on F. M. Fisk.

MRS. ANN FISK
versus
HER HUSBAND, F. M. FISK.

Sixth district court, for the parish of Orleans.

MR. F. M. FISK:

You are hereby summoned to comply with the demand con-
48 tained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of sixth district court of New Orleans in ten days after the service hereof.

Witness the honorable W. H. Cooley, judge of said court, the 22d day of October, in the year of our Lord 1868.

SEAL.] WM. WOELPER, *Clerk.*

Sheriff's return.

Received Oct. 22d, 1868, and the 26 October, 1868, served a copy of the within citation and accompanying petition personally upon F. M. Fisk, defendant herein.
Returned same day.
(Signed) H. R. NIXON,
D'y Sheriff.

Final judgment in this cause is transcribed on page 414 of this transcript.

Decree for alimony.

MRS. MARY ANN FISK
vs.
HER HUSBAND, F. M. FISK. } No. 128.

Sixth district court, for the parish of Orleans.

49 In the matter of the prayer for alimnoy filed in this case by the plaintiff, the court, for the reasons assigned in the written opinion this day filed, ordered & adjudged that the prayer for alimony be allowed, and that pl'ff M. A. Fisk, wife of Francis M. Fisk, the sum of two hundred dollars as alimony, payable monthly during the pendency of this suit and the further order of court, from the 6th November, 1868.

Judgment rendered and signed 2d November, 1869.
(Signed) W. H. COOLEY, *Judge.*

Petition and return to citation in suit No. 2684, 6th district court, parish of Orleans.

MARY ANN FISK
vs.
F. M. FISK ET AL. } 2684.

To the Hon. Wm. H. Cooley, judge of the 6th district court, for the parish of Orleans:

The petition of Mary Ann Fisk, who resides in this city, with
50 respect represent, that she was formerly the wife of Francis M. Fisk, who resides in New Orleans; that they intermarried on the 27th day of June, 1842, in this city, where the matrimonial domicil was established and continued up to the date of the dissolution of said marriage, which was effected by a final judgment of this honorable court, which was signed on the day of , in the present year, 1871; that said judgment is now final and irrevocable, as the delay has expired without an appeal, and that by said judgment your petitioner was decreed entitled to one-half of all the community property. Now, petitioner alleges that said community consists, so far as property in this State is concerned, of certain moveable property, all of which is accurately described and its value given in an inventory made by John N. Ogden, notary public, under the order of this hon. court, and filed on the day of August, 1871.

51 Now, petitioner alleges that she is the owner of, by virtue of the aforesaid decree, and under the laws of this State, of one half

of said property, which she now holds in indivision with the said F. M. Fisk, and the revenues from which the said F. M. Fisk receives regularly without accounting in any way to her.

Petitioner further alleges that she is unwilling longer to hold said property in indivision, and is desirous that a partition should be made; that the real estate is in separate parcels and easily susceptible of division in kind.

Petitioner alleges that the said property is apparently heavily encumbered by mortgages, but that said mortgages are fictitious and have been either placed upon it originally or allowed to remain uncancelled by the said F. M. Fisk for the purpose of destroying the rights of your petitioner in her one half of the community.

That the list of mortgages marked A and made a part of this petition discloses fully and particularly the names of the mortgagees and
52 the respective amounts for which this property appears to be mortgaged, according to the books of the recorder of mortgages, which said list is hereto annexed as part of this petition.

Now, petitioner alleges that all of these mortgages are fictitious, or simulated, and as such should be cancelled and erased.

Wherefore petitioner prays that the said F. M. Fisk and Malek A. Southworth, recorder of mortgages for the parish of Orleans, and all of the said mortgagees who reside in New Orleans be cited to appear and answer this petition, and that after due proceedings had a judgment be rendered ordering the said recorder of mortgages to cancel and erase the said mortgages, and that a partition be ordered to be made in kind of the whole of said property, and that the said partition be regularly referred by the court to a notary public, to be proceeded in according to law.

And petitioner prays for all general and equitable relief.

(Signed) A. N. & H. N. OGDEN,
Att'ys for Pet'r.

53 *List of mortgages attached to foregoing petition, and made a part thereof.*

MORTGAGES.

F. M. Fisk.

The draining-privilege book, P. 1, fo. 391.
" " " " 1, " 370.
" " " " I, 13, " 579.
" " " " 89, 450.

One in favor of W. B. Morris, for paying taxes (C. Code, 2156), for	$1,242 86½
" " " " Henry Fassman, for book 82, fo. 21	1,800
" " " " Chas. M. Morse, book 85, fo. 462, for	7,925
" " " " Thaddeus W. Marshal, book 87, fo. 157, for	15,000
" " " " Thomas J. Dix, book 83, fo. 166, "	3,883
" " " " Patrick Irwin, book 78, fo. 198, "	1,033 33⅓
" " " " Orphan Boys' Asylum, book 83, fo. 167, "	1,333 33⅓
" " " " Ansel Edwards, book 12, fo. 153, "	403 82
" " " " City of N. O., book 12, fo. 332, "	50
Two " " " M. A. Fisk, $200, $200, alimony, book 13, fo. 413, 581; also injunction.	
One in favor of A. G. Farwell & Co., book 13, fo. 725, for	15,735
54 One in favor of Frederick G. Fisk	8,000
" " " " Joseph D. Weaver	3,333 33⅓
State taxes, 1869	321
do. " "	49 50

Return to citation to F. M. Fisk.

Rec'd Sept'r 7th, 1871, and on the 12th of Sept'r, 1871, served a copy of the within citation and accompanying petition on F. M. Fisk, esq., through M. Benner, esq., his agent, in person.

Ret. same day.

(Signed) A. LABAT,
D'y Sheriff.

55 *Inventory by Ogden, notary, offered by complainant fifteenth day of May, 1871.*

Inventory of the community property of F. M. Fisk and Mary Ann Fisk.

STATE OF LOUISIANA,
Parish of Orleans:

By virtue of and pursuant to an order from the honorable the sixth district court for the parish of Orleans, bearing date the sixth day of May, eighteen hundred and seventy-one, issued upon the rule taken by the plaintiff in the matter of the divorce suit between Mary Ann Fisk and Francis Melbourne Fisk, sr., which rule is dated the 29th day of April, 1871, wherein it was ordered that inventory should be taken by me, the undersigned notary, of all the property and effects belonging to the community that existed between the said parties, and situate in this city and parish, said inventory to be taken in the presence of all the parties interested and those duly called, a certified copy of which said rule and order of court is in the margin hereto annexed for reference.

Be it known that on this fifteenth day of May, in the year
56 of our Lord one thousand eight hundred and seventy-one, and of the Indepen'ce of the United States of America the ninety-fifth, before me, John N. Ogden, a notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared Mrs. Mary Ann Fisk, plaintiff as aforesaid; also came and appeared James M. Cooley and Joseph Taylor, the two gentlemen appointed by said court as experts to appraise and value the property to be herein inventoried, they having been first duly sworn according to law; also came and appeared Julius A. Pratt and John N. Conrad, witnesses of lawful age, residing in this city, and specially required to be present to act as such.

In the presence of all the above named parties, I, said notary, did immediately proceed to take a true, faithful, and correct inventory of
57 all the property and effects belonging to the community that existed between Francis Milbourne Fisk, sr., and Mary Ann Fisk, as the same was pointed out to me for that purpose, together with the valuation thereto affixed by the said experts, in the manner and form following, to wit:

MOVABLE PROPERTY.

The following is a correct list of the movable property found in the house known as 22 Natchez street:

Room No. 1, second floor.

One four-post bedstead, with cornice, appraised by said experts at sum of	$35
One spring-mattras'	20

	One marble-top washstand		30
	One marble-top burea', with mirror		50
	One black walnut sofa, with damask cushions		20
	One marble-top pier table, with glass		15
	One marble-top centre table		25
	One oil painting		2 50
	One rocking chair		10
	Three window shades, 2 dollars each		6
	One velvet carpet, forty yards, and one rug		20
	One rug		1
	One towel rack		2
58	One chandelier, with four burners		$35

Room No. 2, second floor.

	One mahogany French bedstead		40
	Two moss mattrasses, at ten dollars each		20
	One spring mattrass		25
	One cornice		2 50
	One oil painting		2 50
	One coal stove		8
	One small mahogany armoir		15
	One large do. do.		25
	One do. centre table		15
	One black walnut bureau, with marble top		35
	One small card table		3
	One towel rack		1
	One mahogany washstand		20
	Two washstands and pitchers		6
	One slop bowl		2
	One stoneware foot tub		1 50
	One tin chamber set		1
	One carpet, forty yards		10
	One chandelier, with two burners		15
	Two damask curtains and rods		2

Room No. 3, second floor.

	One mahogany centre table, marble top		25
59	One mahogany pier table, with glass		$15
	Nine cane-seat chairs		18
	One cane seat rocking chair		3 50
	Two window shades		4
	One tapestry carpet		10
	One mahogany sideboard, with marble top		15
	One mahogany sofa, with haircloth cushions		10
	One mahogany book case		25
	One do. whatnot		5
	One do. dining-room extension table		25

Room No. 4, second floor.

	One walnut bedstead		15
	Two moss mattresses		2
	One bed spring		3
	Two small workstands and one wooden arm-chair		2

Hall, second floor.

	One mahogany sofa	10	

Front room, 3rd floor.

	One large mahogany bedstead, with cornice	50	
	One walnut bedstead, with cornice	35	
	One bed spring	6	
60	Two moss mattrasses, at seven dollars each	14	
	One mahogany armoir	25	
	One do. centre table, with marble top	20	
	One walnut washstand, with marble top	15	
	One gilt-frame looking-glass	40	
	One cane-seat rocking chair	3	50
	One mahogany easy chair	4	
	Two walnut towel-racks, at one dollar each	2	
	One carpent, seventy-five yards	20	
	One mahogany sofa, with hair cushions	10	
	One plain mahogany centre table, wooden top	5	
	Two wash-bowls and one pitcher, @ $1.50 each	3	
	One small oil cloth	1	
	One spittoon and one tin chambre set	2	75

Room No. 2, 3d floor.

	One French mahogany bedstead	25	
	One spring mattrass	25	
	One cornice	5	
	One rosewood imitation centre table	10	
	One mahogany bureau, marble top	12	
61	One rosewood washstand, with marble top	25	
	One towel rack	1	
	One large mahogany armoir	75	
	One carpet, forty-five yards	10	
	One tin chamber-set	3	
	Two wash-bowls	2	
	One pitcher, one soap-dish, one tooth-brush dish	2	50
	One pie stand	1	
	One shovel and tongs	1	
	One shade, one slop-bowel	3	
	One mahogany marble-top bureau, with looking-glass	15	
	One marble-top washstand	12	
	One carpet 25 y'ds	10	
	One window-shade	1	
	One coal stove & pipe	5	
	One pair tongs, one piece zinc, and one water bucket	2	50

Room No. 4, 3d floor.

	One large rosewood bedstead, with cornice	40	
	1 spring mattrass	30	
	1 large rosewood armoir	30	
	1 walnut armoir	15	
	1 plain top bureau, with glass	12	
	1 rosewood washstand, marble top	15	

62	2 towel racks, @ $1 each	2	
	1 marble-top iron centre table	15	
1	cane-seat rocking chair	5	
3	" " chairs, @ 1.50 ea	4	50
1	mahogany easy chair	4	
1	carpet, 30 y'ds	8	
1	window curtain, 1 window-shade, 1 tin tub, 1 tin bucket, 1 piece of oil cloth, 1 fire shovel, 1 spittoon, 1 wash bowl and pitcher	7	

Kitchen.

One	mahogany side-board	10	
1	looking glass, mahogany frame	1	
1	safe	2	50
1	mahogany side table	10	
1	common kitchen do.	1	
1	water barrel & 1 stone jar	1	25
1	Charter Oak stove, cooking	20	

And there being no further time to continue this inventory on this present day I, the said notary, with the consent of all the above-named parties, do adjourn further proceedings in taking this inventory at the hour of 3 o'clock p. m.

In faith whereof said appearers hereto subscribe their names, together with me, the notary.

63 (Signed) MARY ANN FISK.
(Do.) F. B. CONRAD,
In lieu of James M. Cooley.
(Do.) J. D. TAYLOR.

Original signed.
(Signed) JULIUS A. PRATT.
(Do.) JOHN N. CONRAD.
(Signed) JOHN N. OGDEN,
Not. Pub.

And now on this twentieth day of May, 1871, at the hour of eleven o'clock a. m., I, the said notary, resumed taking this inventory in the presence of the aforesaid parties as follows, to wit:

LIST OF THE MOVABLE PROPERTY FOUND IN THE HOUSE KNOWN AS NUMBER 157, CAMP ST.

Front room, third floor.

1	mahogany bedstead with cornice	25	
2	moss mattrass	14	
1	bedspring	5	
1	mosquito bar with rods	5	
2	feather pillows, at the sum of two dollars each	4	
1	lot of bedding	5	
1	mahogany armoir	20	
1	do. side table	8	
1	do. bureau with glass	12	
64	1 marble-top washstand	10	

1 towel-rack	2	
1 wash-bowl & pitcher	2	50
1 chamber & tin foot-tub	1	50
1 gas-fixture	2	50
3 cane-seat chairs @ $1 ea	3	
1 easy chair	3	
1 Brussels carpet of about 50 yards	8	

Hall, 3d floor.

1 small bedstead and cornice	10	
2 moss mattrasses	4	
1 feather pillow	2	
1 pair blankets	1	50
1 mahogany bureau with glass	6	
1 small do. table	2	
1 do. side do.	1	50
1 carpet, about 12 yards	4	

Back room, 3d floor.

1 black walnut bedstead and cornice	15	
2 moss mattrasses, $8 each	16	
1 bedspring	5	
2 feather pillows	4	
1 mosquitoe bar and rods	6	
1 bedspring	2	
1 small mahogany couch	8	
1 moss mattrass	2	50
65 1 mahogany marble-top bureau, with glass	10	
1 mahogany card-table	5	
1 washstand	2	
1 wash-bowl and pitcher, one water-pitcher, 1 chamber, 1 foot-tub, and 1 towel rack	5	
2 cane seat chairs	2	
1 mahogany easy chair	8	
2 mantel onaments @ $1.25 ea	2	50
1 carpet measuring about 40 yards	8	
1 rug	1	
Gas fixtures	2	50

Hall, 3d floor.

1 mahogany wardrobe	15	
1 ' do. side-table	1	50
1 oil-cloth on floor	10	
1 cane-seat chair	1	

Front room, 2d floor.

1 rosewood Victoria bedstead	75	
1 hair-spring mattrass	40	
1 mosquito bar & rods	5	
2 feather pillows @ $2 ea	4	
1 do. bolster	4	
1 lot of bedding	10	

1	black walnut bureau with marble top	35	
	1 imitation rosewood bureau	35	
66	1 bowl and pitcher and one small pitcher	2	
	1 chamber set	2	50
1	towel-rack	2	
2	mahogany sofas	40	
1	do. centre table	25	
1	easy rocking-chair	10	
1	large looking-glass	20	
4	mantel ornaments @ $1 each	4	
1	mahogany easy chair	10	
4	hair-cloth cushions	20	
1	Brussels carpet, 40 yards	45	
1	rug	4	
2	oil paintings, gilt frame, 15 ea	30	
1	steel engraving	5	
2	damask curtains	5	
1	large chandelier with six burners	70	

Hall second floor.

1	small poplar bedstead	10	
2	moss mattrasses	10	
2	feather pillows	4	
1	mosquito bar and rods	3	
1	lot of bedding	5	
1	black walnut washstand, marble top	10	
1	bowl and pitcher and one small pitcher	2	50
	1 toilet stand with glass	12	
67	1 mahogany centre table		
	1 do. rocking-chair	8	
1	old carpet	5	
1	gas-fixture	5	
1	window-shade	2	
2	cornices, 1.25 ea	2	50

Back room, 2d floor.

1	Victoria black walnut bedstead	50	
2	moss mattrasses, $8 ea	16	
2	feather pillows, " 2 "	4	
1	lot of bedding	10	
1	bolster	2	
1	bobinet mosquito bar	5	
1	black walnut armoir	30	
1	looking-glass, gilt frame	20	
1	rosewood sofa	12	
1	do. whatnot	20	
2	easy chairs with hair-cloth cushions, $9 each	18	
2	mahogany cushion chairs	10	
2	cane-seat chairs	3	
1	black walnut centre table, marble top	8	
2	window-shades	5	
2	do. cornices, $1.25 ea	2	50
1	chandelier with 5 burners	30	
1	carpet, about 35 yards	30	

1	rug	5	

Dressing room, 2d floor.

	1 imitation rosewood washstand, marble top	10	
68	1 wash-bowl & pitcher	2	
	1 soap-dish & tooth-mug	1	50
1	chamber sett	2	
1	towel-rack	2	
1	sewing-stand	2	
1	carpet, about 10 yards	2	
1	looking-glass	4	
2	window-shades, $1 each	2	

Hall, second floor.

1	mahogany hat-rack, with glass	10	
2	do. chairs	5	
1	hall chandelier	10	
1	oil-cloth on the floor	5	
1	pier-table	5	
2	cane-seat chairs, $1 each	2	

First gallery room, 2d floor.

1	Victoria imitation rosewood bedstead	50	
1	spring moss mattrass	25	
1	feather pillow	2	
1	do. do.	2	
1	mosquito bar & rods	5	
1	lot of bedding	10	
1	bolster	3	
1	imitation rosewood bureau, with marble top	30	
1	imitation rosewood armoir	25	
1	marble-top rosewood washstand	10	
	1 wash-bowl & pitcher	2	
69	1 tin chamber set	2	
	1 soap-dish	1	25
1	towel-rack	2	
1	looking-glass, gilt frame	4	
1	black-walnut centre table, marble top	12	
3	cane-seat chairs	3	
1	mahogany rocking chair	4	
1	carpet, about 25 yards	15	
1	rug	2	
1	gas fixture	2	

Front room, first floor.

1	large French mirror, gilt frame	100	
2	mantel vases	2	
1	oval mirror, gilt frame	20	
1	set of parlor furniture, consisting of 2 sofas, 2 easy chairs, six imitation rosewood chairs	100	
2	spring-bottom easy chairs	30	
1	mahogany pier-table, marble top	15	

1	imitation rosewood, marble top, centre table	20	
2	whatnots, imitation rosewood	30	
1	centre-table, imitation rosewood, marble top	20	
3	landscape oil paintings, gilt frame	20	
1	Brussel carpet, about 40 yards	40	
1	rug	2	50
1	chandelier, with six burners	70	
	2 damask curtains	8	
70	2 window curtains, $2.50 each	5	

Back room, 3d floor.

1	rosewood Victoria bedstead	70	
2	moss mattrasses, @ $8 ea.	16	
1	bedspring	4	
2	feather pillows	4	
1	bobinet mosquito bar	5	
1	lot of bedding	10	
1	rosewood bedstead, Victoria top	100	
2	moss mattrasses	16	
1	bedspring	5	
1	bobinet bar & rods	5	
2	feather pillows, @ $2 ea	4	
1	feather bolster	2	
1	lot of bedding	10	
1	large rosewood armoir	35	
1	small do. do.	25	
1	rosewood bureau	70	
2	mantel vases, @ $1 ea.	2	
1	steel engraving, gilt frame	15	
1	centre table, black walnut, marble top	12	
1	carpet, about 40 yards	40	
1	rug	2	50
1	chandelier	75	
1	marble-top bureau, with glass	35	
1	black walnut, marble top, washstand	15	
	2 wash-bowls & 2 pitchers	4	
71	2 soap & 2 tooth-brush dishes	2	
	1 towel-rack	2	
1	tin chamber set	2	
1	old carpet	2	
1	large window-shade	2	
2	cane-seat chairs	2	

First gallory room, first floor.

1	imitation rosewood bedstead, Victoria top	25	
2	moss mattrasses	6	
1	bobinet bar & rods (new)	6	
2	feather pillows	4	
1	do. bolster	2	
1	lot of bedding	10	
1	mahogany armoir	30	
1	black walnut, marble-top, washstand	12	
1	oak card-table	15	
1	towel-rack	2	

1	oiled black walnut desk	30	
1	small looking glass	4	
4	window shades and cornices	3	
1	iron money chest	20	
1	carpet	15	
1	tin chamber set	1	50
1	chandelier, five burners	35	
1	rug	1	
2	mantel vases	2	
1	easy chair	6	
	1 cane-seat chair (rocking)	1	50
72	2 cane-seat chairs	2	
	1 mahogany arm-chair	5	

Hall, first floor.

2	cane-seat chairs	3	
2	mahogany do.	5	
2	engravings	20	
1	hall chandelier	5	

Second gallery room, first floor.

1	poplar bedstead, with cornice	30	
2	moss mattrasses	16	
1	bedspring	4	
1	bobinet mosquito bar	5	
2	feather pillows	4	
1	lot of bedding	10	
1	black walnut bureau, with glass, marble top	15	
1	black walnut armoir	12	
1	do. do. washstand	12	
1	wash-bowl and pitcher	2	
1	small pitcher		50
1	soap-dish	2	
2	bronze mantel ornaments	2	
1	gas-burner	2	
1	small card-table	1	50
1	side table	4	
1	do. card-table	1	50
1	hat-rack	1	
	1 carpet, about 10 yards	10	
73	1 rug		
	1 window-shade	1	
1	towel-rack	2	
1	tin foot-tub, 1 poker & pair tongs	1	50
2	cane-seat chairs	2	
1	mahogany easy chair	5	

Third gallery room first floor.

1	mahogany bedstead with corn'ce	15	
2	moss mattrasses	10	
1	bedspring	3	
2	feather pillows	4	
1	lot of bedding	4	

1	mosquito bar	2	
1	black walnut bureau, with glass, marble top	20	
1	black walnut armoir	15	
1	rosewood imitation washstand, marble top	8	
1	bowl & pitcher, one tooth-brush dish, one soap dish	2	50
1	towel rack	3	
1	work-stand	5	
1	earthenware foot-tub & slop-jar	1	50
2	bronze mantel ornaments	2	
1	carpet, ten yards	8	
1	spittoon and 1 fire shovel	1	
1	gas fixture	1	50
2	cane-seat chairs	3	
	1 do. do. rocking do	4	
74	1 mahogany table	5	

Ante-room in basement.

1	mahogany armoir	12	
1	cane-seat chair	1	

Back room, basement.

1	mahogany sideboard, marble top	20	
1	dining extension table	20	
1	chandelier with two burners	10	
1	lounge	10	
1	mahogany table	6	
1	oak frame mirror	8	
1	carpet, about forty y'ds	5	

Hall in basement.

1	table	3	
1	large book-case	10	
1	black walnut table, marble top	5	
2	cane-seat chairs	4	
1	dish stand	1	
1	mahogany bedstead	5	
2	mattrasses	4	
1	washstand	1	
1	wash-bowl and pitcher	2	
1	side-table, marble top	1	
1	gas-fixture	1	

Kitchen.

	1 large cooking stove & utensils	25	
75	1 lot crockery ware	12	
	1 mahogany side-board	5	
1	black walnut safe	5	
1	kitchen table, one gas-burner	2	
2	wooden chairs	2	
1	do. arm do.		50

Front room, basement.

1	French rosewood bedstead cornice	30	
1	spring mattrass	35	
2	feather pillows	4	
1	bobinet mosquito-bar	5	
1	lot of bedding	5	
1	large mahogany armoir	30	
1	fine rosewood marble top washstand	25	
1	wash-bowl & pitcher	2	
1	soap-dish, 1 tooth-brush dish	1	
1	earthenware soap-bowl and earthen vase	2	
1	black walnut bureau with glass, marble top	35	
1	looking-glass, black walnut frame	10	
1	fine mahogany book-case	65	
1	black walnut office table	15	
1	chandelier with four burners	10	
3	cane seat chairs	7	50
1	do. do. do.	1	
1	carpet, about 20 y'ds	15	
	2 mantel vases	2	
76	1 large cedar chest for clothes	10	
	1 lot plated silverware	3	
1	do. do. castor	4	

MOVABLES IN STORE, 135 NEW LEVEE ST.

33	empty cotton card trunks	16	50
34	tin cases	8	50
1	box cont'g oil press cloth	10	
1	set planing knives with fixtures	25	
1	lot of old window shades	5	
1	upright blackboard	2	
1	lot telegraph wheels	2	50
2	trucks	4	
4	boxes cotton card, 2 doz. ea	16	
4	do. do. do. do.	16	
1	washing-machine	10	
39	empty cotton card boxes	19	50
1	double cylinder cotton gin, 120 saws	120	
1	single do. do. do. 80 do.	80	
1	do. do. do. do. 70 do.	70	

SHARES IN STOCK.

Twenty shares Southern Dry-dock Company, valued at ten hundred dollars per share	20,000	00

REAL ESTATE.

77 1st. A certain lot of ground, situate in the first district in square bounded by Julia, Camp, St. Charl's and Girod sts., designated by the number twenty-three on a plan drawn by L. Brenzier, dated the 19th day of February, 1836, deposited in the office of H. B. Cenas, late notary, for reference. Said lot measures, American measure, twenty-seven feet front on Camp street, by a depth of one hundred and forty-

nine feet two inches and three lines between parallel lines on a small street in the rear called St. Mary street, together with all the buildings and improvements thereon. Said lot of ground was acquired by F. M. Fisk by purchase from Charles J. Castell, notary public, dated February 5, 1868. Said piece of property is appraised and valued by said experts at the sum and price of twenty-five-thousand dollars ($25,000).

2d. A certain lot of ground, together with all the buildings and improvements thereon, rights, privileges, customs, ways, servitudes thereunto belonging or in anywise appertaining, situate in square bounded by Gravier, Tchoupitoulas, Natchez and Magazine streets, de-
78 signated by the number eighteen on a plan drawn by T. D. Dakin, on the 5th day of January, 1843, and deposited in the office of Thomas B. Marks, notary public, for reference. Said lot measures in English measure twenty-five feet and one inch front on Natchez st. by a depth of sixty-one feet ten inches and seven lines on the side adjoining lot number nineteen on said plan, twenty-five feet five inches in width in the rear by sixty-three feet four inches and five lines in depth and front on the Arcade Passage, which is common to all the lots fronting thereon. Said piece of property was acquired by F. M. Fisk from Thomas Banks by act of sale passed before Joseph B. Marks, notary public in this city, dated the 7th day of June, 1843. Said piece of property is appraised and valued by said experts at the sum and price of eight thousand dollars ($8,000.00).

3d. A certain lot of ground, together with all the rights, ways, customs, privileges, servitudes thereunto belonging or in anywise ap-
79 pertaining, situated in the first district of this city, in the square bounded by Poydras, Perdido, Rocheblanc & Dorgenois streets, designated by the number one. Said lot forms the corner of Rocheblanc and Poydras streets and measures, American measure, twenty-eight feet four lines front on Poydras, by a depth of one hundred and thirty-two feet between parallel lines. Said piece of property was acquired by F. M. Fisk by purchase from F. Lacroix, by act of sale passed before Alex. E. Bienvenu, notary public in this city, on the 25 day of May, 1866. Said piece of property is appraised and valued by said experts at the sum and price of three hundred dollars ($300.00).

4th. Two certain lots of ground, with all the buildings and improvements thereon, rights, ways, privileges, customs, servitudes thereunto belonging or in anywise appertaining, situate in the square bounded by New Levee, Fulton, Girod and Notre Dame st's, in the first district of this city, and designated as lots number two and three on a plan of the Batture, known as the plan of J. A. Beard, and deposited for
80 reference in the office of H. B. Cenas, late notary public in this city. Lot number two measures twenty-three feet nine inches and six lines front on Fulton street, twenty-three feet eight inches and six lines front on New Levee st., by a depth of one hundred and twenty feet seven inches and one line on the line of lot number, one and one hundred and twenty feet eight inches and six lines on the line of lot number three. Lot number three adjoins lot number two and measures twenty-three feet eight inches and six lines front on New Levee st. and twenty-three feet nine inches and six lines front on Fulton st., by a depth of one hundred and twenty feet eight inches and six lines on the side of lot number two and one hundred and twenty feet ten inches and three lines on the side of lot number two. Said property was acquired by F. M. Fisk by purchase from J. D. Weaver, by act of sale passed before Theodore O. Stark, notary public in this city, dated the 12 day of April, 1866. The said lot number two is appraised and valued by

81 said experts at the sum and price of three thousand five hundred dollars ($3,500.00), and lot number three is appraised and valued by said experts at the sum of eight thousand dollars ($8,000.00).

5th. Two certain lots of ground, together with all the buildings, rights, ways, privileges, customs, servitudes thereunto belonging or in anywise appertaining, situated in the fourth district of this city in the square bounded by Jackson, Josephine, Fulton, and Rousseau streets, designated by the numbers four and five on a plan made by Piquet & Crampton, and deposited for reference in the office of . Said lots adjoin each other and measure each thirty-one feet four inches and one line front on Jackson st. by a depth of one hundred and twenty-one feet between parallel lines. Said piece of property was acquired by F. M. Fisk by purchase from the Society for the Relief of Destitute Orphan Boys by an act of sale passed before Adolph Mazurean, notary public in this city, dated the 26th day of March, 1866. The said lots is appraised
82 and valued by said experts at the sum of fifteen hundred dollars each, making the sum of three thousand dollars ($3,000.00).

6th. Four certain lots of ground, together with the buildings and improvements thereon, rights, ways, privileges, and servitudes thereunto belonging or in anywise appertaining, situate in the same district and square and designated on the same plan as lots number 11, 12, 13, and 14. Said lots adjoin each other and measure as follows: lots number 11, 12 & 13, each thirty-one feet five inches and one line front on Josephine street by one hundred and twenty feet in depth between parallel lines: and lot number fourteen forms the corner of Josephine and Fulton streets. Said lots of ground were acquired by F. M. Fisk by purchase from the Society for the Relief of Destitute Orphan Boys by an act of sale passed before Adolph Mazurean, notary public in this city, dated the 26th day of March, 1866, on a plan made by Piquet and Cramp-
83 ton, deposited in the office of for reference. The said property is appraised and valued by said experts at the sum and price of ten thousand dollars ($10,000.00).

And there being no farther time to continue this inventory on this present day, I, the said notary, with the consent of all the above named parties, do adjourn the same on this the twentieth day of May, 1871, at the hour of five o'clock p. m.

In faith whereof the said appearers hereto subscribe their names with me, the notary.

(Signed) MARY ANN FISK,
(do) F. B. CONRAD,
In lieu of James M. Cooley.
(do) J. D. TAYLOR.

Original signed.
JULIUS S. PRATT.
JOHN N. CONRAD.
(Signed) JOHN N. OGDEN.
Not. Pub.

And now on this fourth day of July, 1871, at the hour of eleven a. m., I, the said notary, resume taking this inventory in the presence of the aforesaid parties, as follows, to wit:

REAL ESTATE—Continued.

84 1*st*. A certain lot of ground, with all the buildings and improvements thereon, situated in the first district of this city, in the

square bounded by New Levee, Notre Dame, Girod, and Fulton sts., designated by the number ten on a plan known as the plan of J. A. Beard, duly certified by K. Cenas on the 12th day of January, 1852, and deposited in the office of H. B. Cenas, late notary, for reference. Said lot measures twenty-three feet eight inches and six lines front on Fulton street by a depth of one hundred and twenty-one feet seven inches and five lines, on the line dividing it from lot number 9, and twelve feet 9 inches and one line in depth and front on Notre Dame street. Said property was acquired by F. M. Fisk by purchase from Henry Fassman by an act of sale passed before Geo. W. Christy, notary public in this city, dated the 21st day of March, 1866. The said lots and improvements are appraised and valued by said experts at the sum of nine thousand dollars ($9,000.00).

85 8. A certain lot of ground, together with all the rights, ways, privileges, &c., situated in the first district of this city, in the square bounded by New Levee, Notre Dame, Girod and Fulton sts., designated by the number nine. Said lot measures twenty-three feet eight inches and six lines front on New Levee st., twenty-three feet nine inches and six lines front on Fulton st., by a depth of one hundred and twenty-one feet six inches and one line on the line dividing it from lot number 8. Said piece of property was acquired by F. M. Fisk by purchase from Henry Fassman by an act of sale passed before Geo. W. Christy, a notary public in this city, dated the 21st day of March, 1866. The said piece of property is appraised and valued by said experts at the sum of two thousand dollars ($2,000.00).

9th. Certain tract of ground, with all the buildings and improvements thereon, situated on the Bayou Saint John, behind the city, of an irregular form, and widening in the rear, measuring two arpents and
86 twenty-nine feet on said bayou by ten arpents and fourteen fathoms in depth, bounded by the lands of Johnson, Thebecourt, Alpuente, and Macarthy, having thirty-four superficial arpents. Said piece of property was acquired by F. M. Fisk by purchase from the Consolidated Association of the Planters of La. by an act of sale passed before A. Ducatel, notary public, dated the 18th day of March, 1843. Said piece of property is appraised and valued at the price and sum of forty thousand dollars ($40,000.00).

10th. A certain lot of ground, together with the buildings and improvements situated thereon, and situate in the square bounded by Natchez, Gravier, Tchoupitoulas and Magazine st., designated as lot number twenty-one on a plan drawn by T. B. Dakin, on the 15th day of Jan'y, 1843, and deposited as plan No. 48 in the office of Thomas B. Marks, a notary public in this city. Said lot measures twenty four feet three and a half inches front on Natchez street, fifty-eight feet eleven inches
87 and seven lines in depth on the side adjoining lot number twenty-one on said plan, fifty-seven feet six inches and two lines in depth on the opposite side line, and twenty five feet five inches in the rear, all American measure. Said piece of property was acquired by F. M. Fisk by purchase from the estate of Thomas Banks by an act of sale passed before Joseph B. Marks, a notary, dated the 7th day of June, 1843. Said piece of property is appraised and valued by said experts at the sum of eight thousand dollars ($8,000.00).

11th. A certain lot of ground situated in the suburb St. Mary in the square bounded by Julia, Baronne, Carondelet, and St. Joseph sts., designated by lot number eight, on a plan drawn by L. Surgi, dated the 4th day of October, 1841, deposited in the office of Theodore Seghers, notary; said lot measures twenty-two feet front on Julia street by a

depth of one hundred and one feet front on Baronne street. Said piece of property was acquired by F. M. Fisk by purchase from the heirs
88 of the late Mrs. Matilda Tabony by an act of sale passed before Charles Victor Foulon, notary of this city, dated the 26th day of June, 1844. Said piece of property is appraised and valued by said experts at the sum and price of fifteen thousand dollars ($15,000.00).

12th. A certain lot of ground with all the buildings and improvements thereon situated in the first district of this city, in the square bounded by New Levee, Girod, Fulton, and Notre Dame sts., designated by the number eight on a plan of J. A. Beard, deposited in office of H. B. Cenas, late notary in this city. Said lot of ground measures twenty-three feet eight inches and six lines front on New Levee street, twenty-three feet nine inches and six lines front on Fulton street, by a depth of one hundred and twenty-one feet four inches and five lines on the said line of lot number 7, and one hundred and twenty-one
89 feet six inches and 1 line on the side of lot number 9, all American measure. The said piece of property was acquired by F. M. Fisk by purchase from Patrick Irwin by an act of sale passed before Theodore Guyol, notary, dated the 3d day of April, 1862. The said piece of property was appraised by said experts at the sum and price of four thousand dollars ($4,000.00.)

Memoranda.

There is a large quantity of movable property up in a room at No. 135 New Levee street, and I, the notary, after repeated application at the residence of F. M. Fisk was each time refused the keys of said room, which keys are in the possession of F. M. Fisk. Not being able to inspect the articles in said room in consequence of an inability to procure the keys, it is impossible to know what their value is. And there being nothing further to be mentioned and appraised and included in
90 this present inventory as declared by the plaintiff Mary Ann Fisk, I, the said notary, did close the same by the following

RECAPITULATION:

Total appraised value of the movable property as the same was appraised by said experts amounting to the sum of five thousand four hundred and seventeen dollars and seventy-five cents	$5,417 75
Total value of shares of stock, twenty thousand dollars	20,000 00
Total appraised value of the real estate as the same was appraised by said experts amount to the sum of one hundred and thirty-five thousand eight hundred dollars.	135,800 00
Total appraised value of the community property of Mary Ann Fisk and Francis Milburne Fisk, sr., as the same was appraised by said experts, amounting to the sum of one hundred and sixty-one thousand two hundred and seventeen $\frac{75}{100}$ dollars	$161,217 75

91 Thus done and closed at my office on the fourth day of July, in the year of our Lord one thousand eight hundred and seventy-

one, in the presence of the said witnesses who have signed their names together with the said appraisers, the said petitioner and me, the notary.

(Signed) MARY ANN FISK,
Do. F. B. CONRAD,
In lieu of James M. Cooley.
Do. J. D. TAYLOR.
Original signed
JULIUS A. PRATT,
JOHN N COWAND.
(Signed) JOHN N. OGDEN,
Notary Public.

The foregoing is a true and correct copy of the original inventory on file in my office.

In testimony of which I hereto sign my name and affix the seal of my office.

(Signed) JOHN N. OGDEN,
[SEAL.] *Not. Pub.*

[5c. int. rev. stamp affixed and cancelled.]

92 *Order transferring cause to the second district court, parish of Orleans.—Extract from the minutes of the sixth district court. (Signed) H. Miester, deputy clerk*

STATE OF LOUISIANA:

Sixth district court for the parish of Orleans.

THURSDAY, *the 22d day of June*, 1876.

Present, the Honorable Aurthur Sancier, judge.

MARY A. FISK *vs.* F. M. FISK. } No. 2684.

On the motion of Hornor & Benedict, acting for plaintiff, and on suggesting the death of plaintiff, it is ordered that this cause be transferred to the second district court for the parish of Orleans.

93 *Supplemental petition of Mary Ann Fisk.—Filed Sept'r 4th*, 1876.

Second district court, parish of Orleans.

MARY ANN FISK *vs.* SUCCESSION OF F. M. FISK. } No. 38811.

To the Hon. A. L. Tissot, judge of the hon. second district court for the parish of Orleans:

The supplemental petition of plaintiff, Mary Ann Fisk, respectfully represents:

That since the filing of her original petition herein, the defendant, F. M. Fisk, her former husband, departed this life; that his succession has been duly opened before this hon. court, and Mrs. Ann Elizabeth

Green has been appointed testamentary executrix of his said estate, Richard Rhodes of this city acting as her agent.

That, as alleged in the original petition, petitioner is the owner of an undivided one-half of all the property, real and personal, acquired by said F. M. Fisk during the existence of the community of acquests
94 and gains between said F. M. Fisk and your petitioner.

That among other property so acquired by said F. M. Fisk, and owned by him at the time of the dissolution of the said community, and of which petitioner is the owner of an undivided one-half thereof, are the following described, viz:

First. A certain lot of ground, together with all the rights, ways, customs, privileges, servitudes thereunto belonging or in any wise appertaining, situate in the first district of this city, in the square bounded by Poydras, Rocheblane, Perdido, and Dorgenois streets, designated by the number one; said lot forms the corner of Rocheblane and Poydras streets, and measures, American measure, twenty-eight feet four lines front on Poydras street, by a depth of one hundred and thirty-two feet between parallel lines; said property was acquired by said F. M. Fisk by purchase from F. Lacroix, by act passed before A. E. Bienvenu, not. pub., on 28th May, 1866.

95 Second. Two certain lots of ground with all the improvements thereon, rights, and privileges situate in the fourth district of this city, in the square bounded by Jackson, Josephine, and Fulton streets, and Rousseau street, designated by the numbers four and five, on a plan made by Pecquet and Crampton, late surveyors, and deposited in the office of , notary public. Said lots adjoin each other and measure each thirty-one feet five inches and one line front on Jackson street, by a depth of one hundred and twenty feet between parallel lines. The said lots form a part of a larger portion of ground sold by Samuel Livermore to Beverly Chew and others in trust for a private association for the relief of destitute orphan boys, by act passed before C. Pollock, late notary public in this city, on the 12th July, 1874.

Third. Four certain lots of ground, with all the buildings and improvements thereon, rights, ways, privileges, &c., situate in the fourth
96 district of this city, in the square bounded by Jackson, Fulton, Josephine and Rousseau streets, designated by the numbers eleven, twelve, thirteen, and fourteen, on a plan drawn by Pecquet & Crampton, late surveyors, and deposited in the office of , notary public. Said lots adjoin each other and have the following dimensions, viz: Lots numbers eleven, twelve, and thirteen measure each thirty-one feet five inches and one line front on Josephine street by one hundred and twenty feet in depth between parallel lines, and lot number fourteen, forming the corner of Josephine and Fulton streets, measures thirty-one feet seven inches and six lines front on Josephine street by one hundred and twenty feet in depth, and front on Fulton street. These lots form a portion of a larger portion of ground originally sold by Samuel Livermore to Beverly Chew and others in trust for the private association for the relief of destitute orphan boys, by an act passed before C. Pollock, late a notary public in this city, on the 12th July, 1824.

97 Fourth. A certain lot of ground, with all the improvements thereon, situate in the first district of this city, in the square bounded by New Levee, Notre Dame, Girod, and Fulton streets, designated by the number ten on a plan known as the plan of J. A. Beard, duly certified by H. Cenas, on the 12th January, 1852, and deposited in the office of H. B. Cenas, late notary, for reference. Said lot measures

twenty-three feet eight inches and six lines front on New Levee street, twenty-three feet nine inches and six lines front on Fulton street, by a depth of one hundred and twenty-one (121) feet seven inches and five lines on the line dividing it from lot number nine, and one hundred and twenty-one feet nine inches and one line in depth and front on Notre Dame street. Said property was acquired by F. M. Fisk by purchase from Henry Fassmann, by an act of sale passed before Geo. W. Christy, not. pub., in this city, dated 21st day of March, 1866.

98 Fifth. A certain lot of ground, together with all the rights, ways, privileges, &c., situate in the first district of this city, in the square bounded by New Levee, Notre Dame, Girod, and Fulton streets, designated by the number nine on a plan known as the plan of J. A. Beard, duly certified by Hugh Grant, late notary. Said lot measures twenty-three feet eight inches and six lines front on said New Levee street, and twenty-three feet nine inches and six lines front on Fulton street, by a depth of one hundred and twenty one feet six inches and one line on the line dividing it from lot No. eight, and one hundred and twenty-one feet seven inches and five lines on the line which divides it from lot No. ten, American measure.

Sixth. A certain lot of ground situate in the square bounded by New Levee, Girod, Fulton, and Notre Dame streets, designated by the

99 number eight on a plan of the batture known as the plan of J. A. Beard, deposited in the office of H. B. Cenas, late a notary public in this city. Said lot measures twenty-three feet eight inches and six lines front on New Levee street, twenty-three feet nine inches and six lines front on Fulton street, by a depth of one hundred and twenty-one feet four inches and five lines on the side of lot number seven, and one hundred and twenty-one feet six inches and one line on the side of lot number nine, all American measure.

All of said properties being fully described in the inventory taken by John N. Ogden, notary public, on 15th May, 1871, by order of the sixth district court, and on file herein.

That said F. M. Fisk was the owner of an undivided one-half of said property at the time of his death, and his succession is now such owner.

That one Clay Green, of the late , of California, represented in this city by Richard Rhodes, his agent and attorney in fact, pre-

100 tend' to be the owner of said properties, without foundation in law or fact, and is a necessary party hereto.

That one M. Benner, of the city of New Orleans, pretends to be the owner of the property fourthly described, without foundation in law or in fact, and is a n cessary party hereto.

That your petitioner is not willing to continue said joint ownership longer; that a partition thereof by licitation thereof is necessary, said property being indivisable in kind.

Wherefore your petitioner prays that an inventory be ordered to be taken of said property by Andrew Hero, jr., notary public; that experts be appointed to examine and report whether said property be divisible in kind or not; that, 1st, Ann Elizabeth Green, testamentary executrix of the succession of F. M. Fisk, through Richard Rhodes, her agent and attorney in fact; 2d, Clay Green, through Richard Rhodes, his agent and attorney in fact; 3d, M. Benner; 4th, Julien Michel, attor-

101 ney of absent heirs of succession of F. M. Fisk.

5th. F. M. Fisk, son and heir, present and recognized, and H. C. Fisk, son and heir, present and recognized, be cited to appear and answer hereto, and after due proceedings had that there be judgment recognizing your petitioner and the succession of F. M. Fisk as the owners

of the aforedescribed property in *property in* proportion of one undivided one half each, and ordering said property to be sold by N. J. Hoey, auctioneer, on terms of one-third cash and the balance at credit of one and two years, secured by vendor's mortgage, bearing eight per cent. interest, and with the usual clauses as to attorney's fees, transfer of insurance, &c., and that all parties be referred before Andrew Hero, jr., notary public, to carry out and complete said partition, and she prays for all general relief.

(Signed) OGDEN & HILL, AND
HORNOR & BENEDICT,
(Signed) F. W. BAKER, *Att'y.*

102 Service of within petition accepted and citation waived.
New Orleans, 2d Sept'r, 1876.
(Signed) FRANCIS M. FISK.
(do.) HENRY C. FISK.
(do.) JULIEN MICHEL,
Att'y Absent Heirs.

But case to be tried contradictorily with me att'y.

Order of court for an inventory.

Order.

Let this supplemental petition be filed; let the inventory herein prayed for be taken by Andrew Hero, jr., notary public, in presence of all parties interested or them duly called, and let Michel Andre and Gus. L. Bermondy be appointed and sworn as appraisers to value the property to be inventoried, and as experts to examine the property herein sought to be partitioned, and to report to this court whether or not, in their opinion, the same is susceptible of a division in kind between the parties to this suit.

New Orleans, September 4th, 1876.
(Signed) A. L. TISSOT, *Judge.*

103 *Inventory by Andrew Hero, Jr., Notary Public.*

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

By virtue of and pursuant to an order of the Hon. A. L. Tissot, judge of the second district court for the parish of Orleans, bearing date the 4th day of September, A. D. 1876, directing that an inventory or appraisment be made of certain property and effects belonging or appertaining, in whole or in part, to the late Francis M. Fisk, and the subject matter of proceedings in said hon. court, entitled Mrs. Mary Ann Fisk vs. Succession of F. M. Fisk, No. 38811 of said court, be taken by the undersigned notary; said order having been rendered on the petition of said Mary Ann Fisk, plaintiff herein, duly certified copies of which said petition are hereto annexed for reference, be it known that, on this thirtieth day of September, in the year of our Lord one thousand eight hundred and seventy-six, and the Independence of the
104 United States of America the one hundred and first, I, Andrew Hero, jr., a notary public in and for the parish of Orleans, duly commissioned and qualified, in the presence of the several parties in interest, whose names are hereunto subscribed, and of Mess. Paul A. Co-

wand and Charles H. Stocker, witnesses, of lawful age and domiciliated in this city, and assisted by Mess. Michel Andry and G. L. Bernondy, both of this city, the appraisers appointed and duly sworn by said hon. judge, as also by the undersigned notary, faithfully to value the property to be inventoried, proceeded to take a true and faithful inventory of the property and effects, together with the valuations thereupon affixed by the aforesaid appraisers, and set forth as follows:

REAL ESTATE.

1. A certain lot of ground, together with all the buildings, rights, ways, customs, privileges, servitudes thereunto belonging or in anywise appertaining, situate in the first district of this city, in the square
105 bounded by Poydras, Perdido, Rocheblane, and Dorgenois streets, designated by the number one; said lot forms the corner of Rocheblane and Poydras streets, and measures in American measure twenty-eight feet four lines front on Poydras street by a depth of one hundred and thirty-two feet between parallel lines; said property was acquired by said F. M. Fisk by purchase from F. Lacroix by act passed before A. E. Bienvenu, not. pub., on May 28, 1866, and said property was appraised by the said appraisers at the sum of three hundred dollars ($300).

2d. Two certain lots of ground with all the improvements thereon, rights and privileges, situated in the fourth district of this city, in the square bounded by Jackson, Josephine, and Fulton and Rousseau streets, designated by the number four and five, on a plan made by Picquet and Crampton, late surveyors, and said lots adjoin each other, and measure each thirty-one feet five inches and one line front on
106 Jackson street, by a depth of one hundred and twenty feet between parallel lines.

The said lots form a part of a larger portion of ground sold by Samuel Livermore to Beverly Chew and others, in trust for a private association for the relief of "Destitute Orphan Boys," by act passed before C. Pollock, late notary public in this city, on the 12th July, 1874, and said property was appraised by said appraisers at the sum of three thousand dollars ($3,000).

3d. Four certain lots of ground, with all the buildings and improvements thereon, rights, ways, privileges, etc., situate in the fourth district of this city, in the square bounded by Jackson, Fulton, Josephine and Rousseau streets, designated by the numbers eleven, twelve, thirteen and fourteen, on a plan drawn by Picquet and Crampton, late surveyors, and deposited in the office of , notary public.

Said lots adjoin each other, and have the following dimensions, viz: lots numbers eleven, thirteen, twelve measure each thirty-one
107 feet five inches and one line front on Josephine street, by one hundred and twenty feet in depth between parallel lines, and lot number fourteen, forming the corner of Josephine and Fulton streets, measures thirty-one feet seven inches and six lines front on Josephine street by one hundred and twenty feet in depth and front on Fulton street. These lots form a portion of a larger portion of ground originally sold by Samuel Livermore to Beverly Chew and others, in trust for the private association for the relief of "Destitute Orphan Boys" asylum, by an act passed before C. Pollock, a notary public in this city, on the 12th of July, 1844.

And the said property was appraised by said appraisers at the sum of eight thousand dollars ($8,000).

4th. A certain lot of ground, with all the buildings and improvements thereon, situated in the first district of this city, in the square bounded by New Levee, Notre Dame, Girod and Fulton streets, designated
108 by the number ten, on a plan known as the plan *known as the plan* of J. A. Beard, duly certified by H. Graves, on the 12th January, 1852, and deposited in the office of H. B. Cenas, late notary, for reference.

Said lot measures twenty-three feet eight inches and six lines front on New Levee street, twenty-three feet nine inches and six lines front on Fulton street, by a depth of one hundred and twenty-one feet seven inches and five lines on the line dividing it from lot number nine, and one hundred and twenty-one feet nine inches and one line in depth, and front on Notre Dame street; said property was acquired by F. M. Fisk by purchase from Henry Fassman, by an act of sale passed before Geo. W. Christy, notary public in this city, dated 21st day of March, 1866.

And said property was appraised by the said appraisers in the sum of four thousand dollars ($4,000).

5th. A certain lot of ground, together with all the rights, ways
109 privileges, &c., situate in the first district of this city, in the square bounded by New Levee, Notre Dame, Girod and Fulton streets, designated by the number nine, on a plan known as the plan of J. A. Beard, duly certified by Hugh Grant, late a surveyor in this city; said lot measures twenty-three feet eight inches and six lines front on said New Levee street, and twenty-three feet nine inches and six lines front on Fulton street, by a depth of one hundred and twenty-one feet six inches and one line, which divides it from lot number eight, and one hundred and twenty-one feet seven inches and five lines on the line which divides it from lot number ten, American measure.

And said property was appraised at the sum of three thousand dollars ($3,000).

6th. A certain lot of ground situate in the first district of this city, in the square bounded by New Levee, Girod, Fulton, and Notre Dame streets, designated by the number eight on a plan of J. A. Beard, de-
posited in the office of H. B. Cenas, late a notary public in this
110 city; said lot measure' twenty-three feet eight inches and six lines front on New Levee street, twenty-three feet nine inches and six lines front on Fulton street, by a depth of one hundred and twenty-one feet four inches and five lines on the side of lot number seven, and one hundred and twenty-one feet six inches and one line on the side of lot number nine, all American measure, and property was appraised by said appraisers at the sum of three thousand dollars ($3,000).

Making the total appraised value of said real estate the sum of twenty-one thousand three hundred dollars ($21,300.00).

And here the said appraisers ordered that, in their opinion, the above described property cannot be divided in kind to suit the respective interests of the aforesaid parties in interest, and said parties in interest declared that they know of no other property hereinbefore mentioned,
111 and thereupon, in recapitulation, I, said notary, do certify that the only property herein inventoried consists of the aforedescribed real estate, and that the total appraised value thereof amounts to the sum twenty-one thousand three hundred dollars (21,300.00).

Whereupon I, said notary, closed this inventory. In faith whereof, I have hereto signed my name, together with the aforesaid parties in in-

terest, the said appraisers, and the said witnesses, on the day and year set forth in the caption hereof.

(Signed) GUS. L. BERNONDY.
(Do.) M. ANDRY.
(Signed) P. A. COWAND.
Do. C. H. STOCKER.
[SEAL.] (Signed) ANDREW HERO, JR.,
Not. Pub.

Service of above rule accepted and submitted, and I have no objection to the homologation of the inventory herein.

N. O., Oct. 14, 1876.

(Signed) FRANCIS M. FISK.
(Do.) HENRY C. FISK.

112 *Answer and exception of the executrix to the supplemental petition of Mrs. Mary Ann Fisk, offered by complainant.*

MRS. MARY ANN FISK
vs.
THE SUCCESSION OF F. M. FISK. } No. 38811.

Second district court of the parish of Orleans.

To the honorable the second district court for the parish of Orleans:

Now comes into court, by her attorneys undersigned, Mrs. Ann Elizabeth Green, testamentary executrix of the succession of F. M. Fisk, made party in the above case and served in the aforesaid capacity, with the citation and supplemental petition of said Mrs. Mary Ann Fisk, plaintiff in the above case, who respectfully begs leave to except peremptorily to this so-styled supplemental petition of said plaintiff on the following grounds:

1st. Because there is an exception filed to the original petition of said plaintiff praying for a partition of the estate of said F. M. Fisk, which exception was never tried.

113 2d. That the said supplemental petition is informal, vague, and incomprehensible, and that in the system of the said Mrs. Mary Ann Fisk demanding a partition by licitation of the succession or estate of F. M. Fisk she has not by said supplemental petition or otherwise put all the heirs of said F. M. Fisk in cause in this case.

3d. That before the said Mrs. Mary Ann Fisk may be entitled to sue the succession of F. M. Fisk for a partition, the succession must be liquidated on a final tableau on account of distribution filed.

4th. The costs of administration, comprising the costs of the clerk of this court, appraisers' fee, the administrator's commission, 2½ on the amount of the inventory; the attorney's fees of the succession for services rendered, which fees amount to one thousand dollars, are not paid, and before any partition may take place all these costs of administration and law charges must be paid.

5th. That in the manner the partition is demanded by the said
114 plaintiff this court is without any jurisdiction. Respondent prays that the peremptory exceptions be maintained, and that the original and supplemental petition presented and filed by Mrs. Mary Ann Fisk be rejected and dismissed with costs.

Should these exceptions be overruled and not otherwise, for answer always by way of peremptory exception to the said supplemental petition, respondent says that on or about the 27th day of December, 1871,

the said F. M. Fisk, now deceased, did present his petition to the district court of the United States in bankruptcy for the eastern district of the State of New York in order to be adjudged a bankrupt; that afterwards, after the proceedings had, to wit, on or about the 27 day of December, 1871, he was duly adjudged a bankrupt.

That after such adjudication, such proceedings were had in said court that Charles W. Goddard was duly chosen and appointed assignee in bankruptcy of the estate of said Francis M. Fisk; and thereupon,
115 to wit, on or about the 7th day of February, 1872, an assignment of all the estate, property, and effects of the said bankrupt, particularly of all the property described in said supplemental petition, was duly made pursuant to the act of the Congress of the United States to Clay M. Green of the city of San Francisco, California, as shown by the said assignment hereunto annexed for reference; consequently respondent is not authorized in law or otherwise to consider the properties described in the said supplemental petition as belonging to the said succession, and thinks the court is without jurisdiction in the matter.

Wherefore she prays for the dismissal of said supplemental petition with costs.

(Signed) W. B. LANCASTER,
(do) J. L. TISSOT,
For Petitioner.

Exception to supplemental petition.—Filed September 20th, 1876.

MRS. M. A. FISK
vs.
SUCCESSION OF F. M. FISK. } No. 38811.

2d district court, parish of Orleans.

116 Now comes Clay Green, through Richard Rhodes, his att'y in fact, and for peremptory exception to the supplemental petition says:

That this court is without jurisdiction ratione materiae so far as the judgment prayed for would affect this appearer.

Wherefore he asks that he be hence dismissed with costs and for general relief.

(Signed) W. B. LANCASTER, *Att'y.*

Exception of M. Benner.—Filed October 10th, 1876.

MRS. M. A. FISK
vs.
SUCCESSION OF F. M. FISK. } No. 38811.

In 2d district court.

Now comes Milton Benner, made defendant herein, and for peremptory exception says that this court is without jurisdiction ratione materiae to try the cause of action set up in the supplemental petition filed in this court, so far as appearer is concerned, or to give as against
117 him the judgment asked for.

(Signed) SEMMES & MOTT,
Per W. B. LANCASTER, *Att'y.*

Certificate of judgment.

THE STATE OF LOUISIANA:

Second district court for the parish of Orleans.

I hereby certify that on the 16th day of December, 1876, judgment was rendered in this court in the following entitled manner, in the words and figures following, to wit:

MARY ANN FISK
vs.
F. M. FISK & AL } No. 38811.

For the reasons assigned in the written opinion of the court this day delivered & on file, it is ordered that the exception herein filed to the jurisdiction of this court be maintained and that plaintiff's suit be dismissed with costs.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court at the city of New Orleans, on this 30th day of July, A. D. 1879.

[SEAL.] (Signed) R. D. HUBBARD,
Deputy Clerk.

118 Record of the succession of F. M. Fisk, offered by complainant.

Second district court, parish of Orleans.

No. 37663.

Succession of F. M. Fisk.

Petition.—Filed December 15th, 1874.

To the hon. the judge of the 2d district court, parish of Orleans:

The petition of Milton Benner, who resides in this city, respectfully shows that F. M. Fisk, who resided in the State of New York, died in this city on Saturday last, the 12th of December, 1874, leaving a last will and testament made by public nuncupative act before W. J. Castell, notary public, an authentic copy of which is herewith filed.

That by said will Mrs. Elizabeth Green, daughter of deceased, and a resident of California, is appointed executrix with seizin; that said
119 Mrs. Green is now absent from this State, and that during her absence the succession of deceased in this State located principally in this city.

That petitioner is a creditor of said succession and said deceased, and is willing to act as dative executor.

Wherefore he prays that said will be probated, filed, homologated, and ordered to be registered and executed: that W. J. Castell, notary public, be ordered to make the inventory of the effects and claim of said deceased, in this parish, and that after due proceedings petitioner be appointed and sworn dative executor of said last will and testament, and for general relief.

(Signed) W. B. LANCASTER, *Atty.*

Order on petition.

Let the last will and testament of the deceased, executed in the nuncupative form by public act before W. J. Castell, notary public, on the 10th December, 1874, a certified copy of which is hereto annexed and filed, be registered and ordered to be executed. Let the inventory within prayed for be taken by Wm. J. Castell, notary public, in pres-
120 ence of all parties interested, or them duly called, and let V. Schehr and A. Morel be appointed and sworn as appraisers to value the property to be inventoried. Let the petitioner's application for letters of dative test'y executorship on this estate be advertised according to law.

New Orleans, December 15, 1874.

(Signed) A. L. TISSOT,
Judge.

Oath of appraisers, N. Schehr & A. Morel.

STATE OF LOUISIANA:

Second district court for the parish of Orleans. No. 37663. Succession of F. M. Fisk.

Before me, Louis A. Richards, deputy clerk of the second district court for the parish of Orleans, personally came and appeared V. Schehr and A. Morel, who solemnly swear that they will well and faithfully perform all and singular the duties of appraisers to value the property to be inventoried herein.

So help me God.

(Signed) V. SCHEHR.
(Do.) A. MOREL.

Sworn to and subscribed before me.

New Orleans, December 15th, 1874.

(Signed) LOUIS A. RICHARDS,
Deputy Clerk.

121 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

DECEMBER 15TH, 1874.

Be it known that on this 15th day of December, A. D. 1874, I, W. T. Houston, first justice of the peace in and for the parish of Orleans, duly elected, commissioned, and sworn, proceeded, at the instance of Henry C. Fisk, to the residence of the late F. M. Fisk, deceased, No. 157 Camp street, in this city, where, in the presence of the said Henry C. Fisk and Clarence Williams, witnesses of lawful age, who sign this process-verbal together with me, said justice, I affixed the seals to one iron safe, one tin cash-box, two trunks, one desk and its drawers, which articles were afterward placed in a pantry securely locked and sealed by me, said justice; that I affixed the seals on one armoir, also one wooden green box, which was also placed in the said pantry; that I thereupon appointed said Clarence Williams, who resides on the premises, keeper of the seals.

122 This done on the stop and without turning aside to other things.

The key of the armoir and pantry I received: the keys of the desks

and safe were said to be in the hands of some third person—Mr. Lancaster. Nothing was known of the keys of the trunk.

[SEAL.] (Signed) W. T. HOUSTON,
First Justice of the Peace.

(Signed) H. C. FISK.
(Do.) CLARENCE WILLIAMS.

Opposition to application.—Filed December 17th, 1874.

To the honorable the judge of the second district court for the parish of Orleans:

The opposition of Francis Melbourne Fisk and Henry Clay Fisk, residents of this city, to the petition of Milton Benner, asking to be appointed dative testamentary executors of the will of Francis Melbourne Fisk, deceased, respectfully represents that the said Francis Melbourne Fisk, deceased, left four heirs living and represented as follows: Francis Melbourne Fisk and Henry Clay Fisk, opponents herein; Ann Elizabeth Fisk, now the widow of William Green, and who re-
123 sides in San Francisco, State of California, and Georgiana Fisk, only child of W. H. Fisk, deceased, half-brother of opponents, residing in Louisville, Ky.

Opponents show that by law, as the heirs of the deceased, Francis M. Fisk, they are entitled to be preferred to the said Milton Benner, claiming to be a creditor.

Wherefore opponents pray that the application of the said Milton Benner be rejected, and that opponents, Francis M. Fisk and Henry Clay Fisk, be appointed dative testamentary executors, with seizin of the estate.

(Signed) OGDEN & HILL
& O. N. OGDEN,
Att'ys for Opp'ts.

Opposition to application for administration.—Filed December 17th, 1874.

Succession of F. M. Fisk.

To the hon. the judge of the second district court, for the parish of Orleans:

The petition of E. T. Parker respectfully represents—

124 That an application for the appointment of dative testamentary executor herein was filed on the 15th of December, inst., 1874, by Milton Benner.

That your petitioner and opponent, by virtue of his office of public administrator, is entitled to and claims the appointment of dative testamentary executor herein under the provisions of the act of 1870, the 3d section of which provided that "In all testate successions when from any cause the executor cannot discharge the duties of his office, the judge shall appoint the public administrator of the parish dative testamentary executor."

Wherefore your petitioner prays that he be allowed to oppose the application of the said Benner; that the said application be rejected, and that your petitioner and opponent be appointed dative testamentary executor of the succession of F. M. Fisk, and that letters testamentary issue to him according to law.

Further, he prays for all such further orders and decrees as may be necessary in the premises.

125 (Signed) H. G. MORGAN,
Att'y for Pub. Administrator.

See petition of W. W. Washburne for probate of will, &c.* (2 pages after).

Petition for inventory and to raise the seal.—Filed December 21st, 1874.

To the honorable the second district court for the parish of Orleans:

The petition of W. Washburne, residing in New Orleans, with respect represents—

That petitioner has been qualified as testamentary executor of the succession of F. M. Fisk, whose will has been duly probated in this court. That it is necessary that an inventory of the property and effects of said succession be made, for which purpose the seals must be raised from his effects.

Wherefore petitioner prays that the seals put on the effects of said succession be raised; that an inventory of the property and effects of the said succession be made by R. C. Mott, notary public; that

126 be appointed appraisers, and the officers who placed the seals on said effects be ordered to raise the same, and for general relief.

(Signed) SEMMES & MOTT,
Att'ys of Pet'r.

Order on petition.

Let the inventory within prayed for be taken by Rob't Mott, notary public, in presence of all parties interested, or them duly called, and let Gust. Gast and Anthony Prados, sr., be appointed and sworn as appraisers to value the property to be inventoried. Let the seals affixed to the effects of the deceased be raised by the officer who affixed them.

New Orleans, December 22d, 1874.

(Signed) A. L. TISSOT, *Judge.*

**Petition of William W. Washburne for probate of will and appointment as executor.—Filed December 21st, 1874.*

To the honorable the second district court for the parish of Orleans:

The petition of William W. Washburne, who resides in New

127 Orleans, with respect represents that Francis M. Fisk at the time of his death left an olographic will dated 11th April, 1871, and a codicil of same date, whereby petitioner was appointed executor of said will.

Petitioner prays that said will and codicil now produced may be probated and petitioner be permitted to qualify and act as executor with detainer of the property of the succession.

(Signed) SEMMES & MOTT, *Att'ys.*

Order.

Let the last will of the deceased be proved before me forthwith.

New Orleans, December 21, 1874.

(Signed) A. L. TISSOT, *Judge.*

Let the petitioner be confirmed as testamentary executor of the deceased, and let letters issue to him as such on his taking the oath prescribed by law.

New Orleans, December 21st, 1874.

(Signed) A. L. TISSOT, *Judge.*

128 *Oath of testamentary executor, December 21, 1874.*

STATE OF LOUISIANA:

Second district court for the parish of Orleans.

No. 37663. Succession of F. M. Fisk.

Before me, Joe Gaudel, deputy clerk of the second district court for the parish of Orleans, personally came and appeared W. W. Washburne, who solemnly swears that he will well and faithfully perform all and singular the duties of testamentary executor of the deceased.

So help me God.

(Signed) W. W. WASHBURN.

Sworn to and subscribed before me.
New Orleans, December 21, 1874.

(Signed) JOE GAIRDEL,
Deputy Clerk.

Oath of appraisers, Gast and Prados, sr., December 22, 1874.

STATE OF LOUISIANA:

Second district court for the parish of Orleans.

No. 37663. Succession of F. M. Fisk.

Before me, Louis A. Richards, deputy clerk of the second dis-
129 trict court for the parish of Orleans, personally came and appeared Gust. Gast and Anthony Prados, sr., who solemnly swears that they will well and faithfully perform all and singular the duties of appraisers to value the property to be inventoried herein.

So help me God.

(Signed) A. PRADOS, SR.
(Do.) G. GAST.

Sworn to and subscribed before me.
New Orleans, Dec. 22d, 1874.

(Signed) LOUIS A. RICHARDS,
Deputy Clerk.

Petition of Mrs. Anna Elizabeth Fisk.—Filed January 6th, 1875.

To the honorable the second district *district* court for the parish of Orleans:

The petition of Anna Elizabeth Fisk, widow of William Green, of this city, and now therein residing, humbly represents:

That her lamented father, Francis Melbourne Fisk, departed this
130 life , and his succession was legally opened before this honorable court on the .

That her said father has made by a public act before William Joseph Castell, esq., a notary public in this city, on the 10th of December, 1874, his last will and testament, by which he has appointed your petitioner executrix of his said last will and testament with the seizin of his estate, which last will and testament, was duly filed in court on the 15th December, 1874, in the mortuary proceedings for the opening of the succession of her said father before this honorable court under the No. of the docket of the court; and now your petitioner annexes to her petition for reference the said will and testament, and prays for the execution and recording according to law and the issuance of letters testamentary to her, and she prays also to be confirmed and qualified by the court as testamentary executrix of her said father, Francis Melbourne Fisk,
131 and that letters testamentary be delivered to her according to law.

(Signed) W. B. LANCASTER,
(Do.) J. L. TISSOT,
Att'ys for Petitioner.

Order.

Considering the petition*er* herein filed and the date of the will filed therewith, let the last will and testament of the deceased, executed in the nuncupative form by public act before W. J. Castell, notary public, on the 10th December, 1874, a certified copy of which is hereto annexed and filed, be registered and ordered to be executed. Let the petitioner be confirmed as testamentary executor of the deceased, and let letters issue to her as such on her taking the oath prescribed by law.

New Orleans, January 7, 1875.

(Signed) A. L. TISSOT, *Judge.*

Oath of test'y executrix, January 9th, 1875.

STATE OF LOUISIANA:

Second district court for the parish of Orleans.

No. 37663. Succession of F. M. Fisk.

132 Before me, Louis A. Richards, deputy clerk of the second district court for the parish of Orleans, personally came and appeared Anna Elizabeth Greene, who solemnly swears that she will well and faithfully perform all and singular the duties of testamentary executrix of the last will and testament of the deceased.

So help her God.

(Signed) ANNIE E. GREENE.

Sworn to and subscribed before me.

New Orleans, January 9th, 1875.

(Signed) LOUIS A. RICHARDS,
Deputy Clerk.

Petition of Francis M. Fisk and Henry Clay Fisk.—Filed January 9th 1875.

Succession of F. M. Fisk. No. 37663.

2d dist. court, parish of Orleans.

To the hon. the judge of the 2d district court for the parish of Orleans:

The petition of Francis M. Fisk and Henry Clay Fisk, sons of F. M.

Fisk, deceased, and largely interested in the administration of his,
133 estate, which is now under control of this Hon. court, with respect, shows that one Elizabeth Green, who resides in the State of California, and who is here with no purpose to remain, but who represents herself as a resident of Louisiana, has applied to qualify as testamentary executrix under what purports to be the last will of said F. M. Fisk, and that letters of executorship are about to issue to the said Elizabeth Green, without requiring from her a bond as the law directs.

Wherefore petitioners pray the order of the court recognizing her as testamentary executrix be so modified as to require from her a bond and security such as the law directs, and that until such bond be furnished no letters be issued to her.

Petitioners pray for all general and equitable relief.

(Signed) OGDEN & HILL, *Att'ys, &c.*

134 *Judgment.—January 23d*, 1875.

Second district court for the parish of Orleans.

No. 37663. Succession of F. M. Fisk.

For the reasons assigned in the written opinion of the court this day delivered and on file, it is ordered, adjudged and decreed that the application of Milton Benner for the dative executorship herein, as well as the oppositions of E. T. Parker, public administrator (discontinued), and F. M. Fisk, and Henry Clay Fisk be dismissed, and that the order herein obtained by said Milton Benner, on the 15th day of December, 1874, be cancelled and annulled, and that the orders herein obtained by W. W. Washburne, on the 21st and 22d of December, 1874, be also cancelled and annulled, and that the order herein obtained by Mrs. Anna Elizabeth Fisk, widow William Green, be modified so as to order her to furnish bond with surety as required by law, previous to
135 the issuance of letters to her, and in all other respects maintained.

Judgment rendered January 18, 1875.

Judgment signed January 23d, 1875.

(Signed) A. L. TISSOT, *Judge.*

Petition for an inventory.—Filed January 20th, 1875.

To the honorable the second district court for the parish of Orleans:

The supplemental petition of Mrs. Anna Elizabeth Fisk, widow of William Green, of this city, and therein now residing, respectfully represents that the succession of her lamented father, Francis Melbourne Fisk, who departed this life on the 12th December, 1874, leaving property here, has been opened under No. 37663 of the docket of this court. That petitioner has probated in court the last will and testament made by her said father, the said Francis Melbourne Fisk, before W. J. Castell, esq., notary public, in this city, on the 10th December, 1874,
136 and by which your petitioner is appointed executrix of the succession of her said father.

That she has been confirmed testamentary executrix of her said father, and the said last will and testament ordered to be executed.

That the court has revoked all other orders appointing or confirming other testamentary executors of the succession of Francis Melbourne Fisk, ordering that letters testamentary executrix be delivered to your petitioner on giving surety as required by law. That, in order to enable

her to furnish security as the law requires, it is necessary that an inventory of the property left by her father in this city and parish be taken according to law, and that an attorney to represent the absent heirs of the succession of Francis Melbourne Fisk may be appointed by the court.

Wherefore petitioner prays the court to grant her leave to file this supplemental petition, that a notary public be appointed to take an inventory of the property left by the deceased, Francis Melbourne
137 Fisk, and that two appraisers be appointed to estimate the said property, and she prays also for the appointment of an attorney to represent the absent heirs of the succession, and she prays for general relief.

(Signed) W. B. LANCASTER &
J. L. TISSOT,
Attorneys for Petitioner.

Order.

Let this supplemental petition be filed. Let the inventory within prayed for be taken by W. J. Castell, notary public, in presence of all parties interested, or them duly called, and let V. Schehr and A. Morel be appointed and sworn as appraisers to value the property to be inventoried.

Let Julien Michel, esq., attorney and counsellor at law, be appointed to represent the absent heirs of the deceased.

New Orleans, January 20th, 1875.

(Signed) A. L. TISSOT, *Judge.*

Oath of appraisers, Schehr and Morel.

STATE OF LOUISIANA:

Second district court for the parish of Orleans.

138 No. 37663. Succession of F. M. Fisk.

Before me, Joe Garidel, deputy clerk of the second district court for the parish of Orleans, personally came and appeared V. Schehr and A. Morel, who solemnly swear that they will well and faithfully perform all and singular the duties of appraisers to value the property to be inventoried herein.

So help them God.

(Signed) A. MOREL.
(Do.) V. SCHEHR.

Sworn to and subscribed before me.
New Orleans, Jan'y 20th, 1875.
(Signed) JOE GAUDEL,
Deputy Clerk.

Petition for homologating an inventory.—Filed January 28, 1875.

Second district court for the parish of Orleans.

No. 37663. Succession of Francis Melbourne Fisk.

To the honorable the second district court for the parish of Orleans:

The petition of Mrs. Anna Elizabeth Fisk, widow of William Green, of this city, and herein residing, respectfully represents:

139 That according to an order of this honorable court rendered on

the supplemental petition of your petitioner in the above succession, W. J. Castell, esq., has taken an inventory of the property left here by F. M. Fisk, which inventory is hereto annexed for reference.

Wherefore petitioner prays that the said inventory be duly recorded and homologated according to law.

(Signed) W. B. LANCASTER AND
J. L. TISSOT,
Attorneys for Pet'r.

Order.

Let the inventory herein taken, and which is hereto annexed and filed, be approved and homologated.

New Orleans, January 28th, 1875.

(Signed) A. L. TISSOT, *Judge.*

Inventory.—Filed January 28th, 1875.

No. 37663.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

141 Be it known that on this day, the twenty-third of the month of January, in the year of our Lord one thousand eight hundred and seventy-five, by virtue of and in conformity with an order from the honorable the judge of the second district court for the parish of Orleans, rendered on the supplemental petition of Mrs. Anna Elizabeth Fisk, widow of William Green, of this city, and therein now residing, representing that the succession of her father, Francis Melbourne Fisk, who departed this life on the 12th December, 1874, leaving property here, has been opened under No. 37663 of the docket of said court: that petitioner has probated in court the last will and testament made by her said father, the said F. M. Fisk, before the undersigned notary, on the 10th December, 1874, and by which petitioner is appointed executrix of the succession of her said father.

142 That she has been confirmed testamentary executrix of her said father, and the said last will and testament ordered to be executed.

That said hon. court has revoked all other orders appointing or confirming other testamentary executors of said succession, ordering letters testamentary executrix be delivered to petitioner on giving surety as required by law.

That in order to enable her to furnish security as the law requires it is necessary that an inventory of the property left by her father in this city and parish be taken according to law, and that an attorney to represent the absent heirs of said succession may be appointed by said court.

And praying, therefore, that said court grant her leave to file said supplemental petition that some notary public be appointed to take an inventory of the property left by the deceased, for the appointment of appraisers, and for the appointment of an attorney to represent the absent heirs, and so forth.

And which order reads as follows:

143 Let this supplemental petition be filed. Let the inventory

within prayed for be taken by W. J. Castell, notary public, in presence of all parties interested, or them duly called, and let V. Schehr and A. Morel be appointed and sworn as appraisers to value the property to be inventoried. Let Julien Michel, esq., attorney and counsellor at law, be appointed to represent the absent heirs of the deceased.

New Orleans, January 20, 1875.

(Signed) A. L. TISSOT,
Judge.

A duly certified copy of which supplemental petition and order of court is and remains hereunto annexed for all future reference.

In my notarial office, and before me, William Joseph Castell, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared the parties hereinafter named and undersigned, for the purpose of taking an in-
144 ventory and appraisement of the succession of the said late Francis M. Fisk, deceased, namely:

1st. Mistress Ann Elizabeth Fisk, widow of William Green, of this city, petitioner herein and testamentary executrix of the last will and testament of said Francis M. Fisk.

2d. Julien Michel, esq., of this city, attorney and counsellor at law, appointed by said hon. court to represent the absent heirs of the said late Francis M. Fisk.

3d. Messrs. Frank M. Fisk and Henry C. Fisk, also of this city.

4th. Messrs. Valentine Schehr and A. Morel, the appraisers, duly appointed and sworn by said hon. court to value the property to be here inventoried.

5th. Messrs. Harris Murphy and James J. Woulfe, competent witnesses, residing in this city, and herein specially required by law.

And then and there, to wit, at the hour of twelve o'clock m., I, said notary, made said inventory, as follows, having first proceeded with said parties to the late residence of the deceased, No. 157 Camp
145, 146 street, in this city, and examined the effects belonging to deceased, as the same were pointed out to and valued by said appraisers, the seals on the same having been previously examined by the hon. the first justice of the peace of the parish of Orleans, who affixed the same, and by him raised after finding the same intact.

MOVEABLES.

1*st. Household furniture.*

In front room.

A set of green-covered furniture, consisting of one sofa, one rocking chair, one easy chair, one bed chair, four chairs, the whole valued in block by said appraisers at the sum of.....	$100	00
1 rosewood Victoria bedstead and bedding	70	00
1 rosewood bureau, marble top.....	30	00
2 whatnots	20	00
1 marble top washstand.....	15	
1 " " pier table	15	
1 oval mirror	10	
1 large do.	30	
1 towel-rack		50
1 marble-top centre table	10	

	1 chamber set	2
	2 oil paintings	15
	2 lace curtains & cornices	20
147	1 carpet	30
	1 set office irons	1
	1 rug	1
	1 foot-stool	50

In back parlor.

	1 sofa, 2 easy chairs, and 2 chairs	25
	1 lounge	5
	1 rosewood Victoria bedstead and bedding	40
	1 marble-top rosewood bureau	25
	1 black walnut armoir	25
	1 mahogany do.	15
	1 marble-top washstand	8
	1 black walnut marble-top center table	10
	1 engraving	2
	1 lamp	2
	1 vase	50
	2 chandeliers	20
	1 coal box	1
	1 carpet	10
	2 cornices and curtains	10
	1 sideboard in back room	20
	1 towel-rack	50
	1 carpet	1
	2 cane-bottom chairs	1
	1 common armoir	3

148 MEMORANDUM.—Seals on the following (found intact):

Seals on armoir.
Seal on room No. 1, in yard (one seal).
Seal on tin box marked F. M. Fisk.
Do. on small safe.
Six seals on desk.
Two do. on leather trunk.
Seals on wooden trunk.
Do. " do. box.

In small room in yard.

	1 desk	$15
	A lot of sundries, consisting of locks, boxes, &c., value in block	10

In room No. 3.

	1 armoir	15
	1 marble top centre table	15
	1 cane bottom rocking chair	75
	3 old hair-seat chairs	2 50
	2 cane-bottom chairs	1
	2 rugs	1 50
	2 foot stools	50

	3 set of curtains, 2 shades, &c	3	
	1 piece of matting		75
	1 chandelier	5	

In first gallery room.

	1 bedstead & bedding	10	
	1 marble top bureau	6	
	1 armoir	7	
	1 marble-top washstand	2	50
	1 card table	1	
149	2 cane-bottom chairs	1	
	1 piece of old matting		50

Second gallery room.

	1 Victoria bedstead and bedding	10	
	1 marble-top bureau	5	
	1 do do washstand	2	50
	1 armoir	6	
	1 card table	2	
	1 engraving	1	
	1 old rocking chair	1	
	1 towel rack		50
	1 chair		50
	1 rug		25
	1 old carpet	2	00
	1 pitcher & bowl		50

In hall.

	2 antique chairs	4	
	2 cane-bottom do	2	
	1 hat rack	7	
	3 engravings	3	
	1 oil cloth	15	
	3 rugs		75
	1 chandelier	5	

In front room, 3d story.

	2 mahogany hair-covered sofas	30	
	1 do marble-top table	10	
	1 green easy rocking chair	6	
	1 red do do do	3	
	1 marble-top centre table	5	
	4 hair-bottom chairs	8	
150	1 whatnot	5	
	1 looking-glass	8	
	3 oil paintings	12	
	1 engraving	1	
	2 curtains & cornices	8	
	1 rug		50
	1 piece of matting	1	
	2 vases	1	
	1 chandelier	8	

Second room, 3d story.

1 Victoria bedstead and bedding	50	
1 rosewood armoir	20	
1 do (marble-top) bureau	15	
1 washstand (do)	8	
1 black walnut armoir	12	
1 marble-top centre table	8	
2 arm chairs (mahogany hair bottom)	10	
2 chairs do do do	5	
1 looking-glass	4	
1 towel rack		50
1 desk heater	1	
1 pitcher & bowl	1	
1 engraving	1	
1 matting	2	
2 rugs		50
Fire irons & coal box	1	
2 shades & cornices	2	
1 chandelier	5	

In third room.

1 mahogany card table	8	
2 cane-bottom chairs	1	
151 1 carpet	2	50

First gallery room on third floor.

1 Victoria bedstead & bedding	20	
1 armoir	6	
1 marble-top bureau	8	
1 sofa	4	
1 washstand	2	
1 looking-glass	2	
1 arm chair	2	
1 easy chair, hair bottom	3	
1 small table	1	
2 cane-bottom chairs	1	
1 small card table		50
1 carpet	1	

In hall, 3d floor.

1 antique hall chair	4	
1 hat rack	4	
2 old chairs		50
1 piece matting		50
1 chandelier	2	

Small room, 3d floor.

1 small bedstead & bedding	5	
1 armoir	3	
1 marble-top washstand	3	

1	dressing table	3	
1	small do	1	
1	hair-bottom arm chair	2	
1	towel rack		50
	1 bowl & pitcher	1	
152	1 carpet	2	
	1 curtain, &c	2	

First room, 4th story.

1 old style armoir	3	
1 do. do. bureau	2	
1 do. spring mattrass	2	
1 do. washstand		50
1 do. arm chair	1	
1 do. carpet		25
1 do. chair		25
Mantel ornaments		25

In small room.

1 bed & bedding	5	
1 bureau	2	
1 card table	1	
1 small washstand	2	
2 old chairs		50
1 towel rack		25

In hall, 4th story.

1 oil cloth	1	
3 chairs	1	50

Second room, 4th story.

1	black walnut bedstead and bedding	20	
1	armoir	4	
1	marble top washstand	4	
1	old bureau	2	
1	arm chair	1	50
4	cane-bottom chairs	2	
1	carpet	2	
	1 pitcher & bowl		50
153	Mantel ornaments		50

Hall on ground floor.

1 show case	5	
1 ice box	3	
A lot of sole leather	1	

First room, ground floor.

1 table and 1 chair	1	50
1 easy do.	1	
2 cane bottom do.	1	

1 lot of old books	1
1 writing table	3
2 cases of army caps	10
& 500 caps in same	25
1 tray and stand	1
1 looking glass	1

Second room, ground floor.

1 extension table	15
1 sideboard & contents	25
1 old side table	2
1 dinner do.	1
1 looking glass	1
1 rocking chair, 2 arm chairs, and chairs	2
1 chandelier	2

Kitchen.

1 stove and kitchen utensils, safe, table, lot of crockery ware	20

Servants' room.

2 old sofas & 1 arm chair	2

154 In yard.

1 chicken coop or house	1 50
A lot consisting of one dozen bottles of rheumatic medicine	2 50
68 boxes containing one hundred and eighty-nine dozen cotton cards	283 50

In armoir on gallery hall.

55 mixed books	3
1 Camp's computing scale	25
1 quandrant	3
3 account books	3

Jewelry, &c.

One agate gold ring	3
1 pair gold spectacles	3
1 opal breastpin in pawn shop	5
1 double case hunting watch " "	35
6 plated table spoons, 3 plated forks, 2 plated tea spoons, 3 catheters, and 1 pair nutcrackers	5
1 bolt braid	1

In tin boxes.

Ten shares of the capital stock of the New Orleans, Jackson and Great Northern Railroad Company, as per certificate number 2063	45

Thirty dollars scrip of the Citizens' Mutual Insurance Co., as per certificate No. 10, no value.

155 One note of C. W. Van Rant, of New York, payable at ten days, for the sum of fifty dollars, valued at $40.00.

One due bill of A. R. Ober for the sum of thirteen $\frac{55}{100}$ dollars, considered of no value.

One note of Geo. F. Young, dated New York, Oct. 7, 1869, for the sum of two hundred and twenty dollars, payable ninety days after date, considered of no value.

One note of Mary A. Williams for the sum of ten dollars, considered of no value.

Receipt of Manning and De Forrest, of New York, for twenty thousand in bank notes of the Mechanics' Bank, of Georgia.

Receipt of same parties for ten thousand dollars in bank notes of the Merchants' and Planters Bank of Georgia, all of which is herein made by way of memorandum.

Memorandum.

Assignment of patent of S. L. Langdon for street locomotive
156 engine.

Copy of protest metropolitan police warrants, one of W. T. Sims, Jonesboro', Ga., for 32 hats.

Letter J. V. Cooke, New York, dated Dec. 5, 1874.

Copies of mortgage acts before Castell & Eustis, notaries, for $16,000.

Receipt of Dr. J. M. Cullin, for rent.

One mortgage note, executed by F. M. Fisk, dated Feb'y 5, 1868, for the sum of $7,925 (paraphed by me, notary).

Letter, Fellowes & Fellowes, New York, Sept. 12, '74.

Receipt, Stanley, Langdon & Brown, for $250.

Patent for 640 acres of land in Texas, dated March 3d, 1856.

Receipt, E. P. Dutton, New York, for nine volumes Shakespear works, to be sold for $400, dated New York, Oct. 23, 1874.

Sundry powers of attorney to deceased.

Receipt, W. A. Carter, New York, October 23, 1874, for bell; two thousand six hundred and ninety-six dollars in Cotton bank notes of
157 the State of Mississippi, dated April, 1862; seven hundred and ten dollars in bank notes of same State, 1862.

Seventy-five dollars in notes of State of Florida, 1862.

Five dollars in notes of same State, 1859.

Ten dollars in Virginia treasury notes, 1861.

Eighty-one dollars of same notes, 1862.

Two hundred and six dollars in Central R. R. and Banking Co. notes, 1862.

One hundred and eighty-five dollars in Alabama notes, 1864.

Eighteen dollars, notes State of North Carolina, 1866.

Twenty-seven dollars, notes Louisiana, 1862.

Ninety one dollars in miscellaneous bank-notes, shin-plasters.

Two hundred and twenty-two dollars in miscellaneous bank-notes, 1862.

Fifty dollars in notes, Bank of Fulton, Georgia, 1863.

Four hundred and sixty-nine dollars in miscellaneous bank-notes issued previous to and after year 1860.

One memorandum book.

158 One receipt for two gold watches from Dr. Blanchfeldt, dated New York, October 21st, 1874.

Three notes of S. P. Evans, for $240, dated New Orleans, July 3d, 1867.

Copy of mortgage act and note for $1,250, dated New Orleans, March 25th, 1867, before Christy, notary.

Patent, B. H. Liftfoot, for treating tanned leather.

Four certificates, five shares each, in New York Abel Loom & Co., of $100 each.

Five certificates, of five shares each, in Abel Loom & Co., of one hundred dollars each.

Assignment of patents (Canada) to N. Eastern, Abel Loom & Co. Certificate of incorporation of same.

Assignment of Abel Weft, thread-knitting loom.

Formula for Laird's patent for welding and refining steel.

One mortgage note for $2,000, dated April 21st, 1870.

Assignment of F. M. Fisk to Sutton of judgment, Fisk versus Acres, for $6,475 principal and $1,128.50 interest, assignment dated Nov., 1868.

159 Deed of sale of property and note by George Sutton, dated 21st of April, 1870.

Description of leather-tanning process.

Certificate of deposit for the sum of $5,000 in the Lynchburg Savings Bank, Lynchburg, Va., dated 3d November, 1863.

Fifty coupons of eight $\frac{50}{100}$ dollars each of Georgia State bonds of 1861.

Certificate for 300 shares of the capital stock of Home Insurance Co., of Savannah, Ga., dated Feb'y 1st, 1864, on which $10 per share are paid.

Certificate of three shares of Augusta Importing Co.

Certificate of two hundred and fifty shares, of $100 each, of the capital stock of the Great Southern Insurance Company.

Fifteen coupons, State of South Carolina bonds.

List Belmont collection of paintings.

Twenty-seven thousand seven hundred dollars in Confederate eight per cent. bonds, with coupons.

Four thousand dollars in Confederate six per cent. bonds, se-

160 cured export naval stores, cotton, and tobacco, with coupons.

Twenty-six thousand two hundred and fifty dollars in Confederate cotton bonds, with coupons.

Twelve thousand one hundred dollars in 4 % registered bonds.

Eight hundred dollars new tax certificates Confederate States of America.

One bond of one thousand dollars of State of North Carolina, 1862, with coupons.

One bond of one thousand dollars, Confederate States of America.

Thirty-four certificates for issue of Confederate bonds.

One order for 50 sacks Virginia salt, 1864.

Five hundred and twenty-seven dollars in notes, Bank of Chattanooga, Tenn., 1862.

Two hundred and eighty-five dollars in same bank notes, 1858 & 1859.

In trunk.

One day-book, No. 1, ending 1870; 70 pages.

One day-book, No. 2, ending 1874; 107 pages.

161 One draft of Duncan, Sherman & Co., 1st unpaid, dated New York, May 6th, 1874, for $750.

One draft, drawn by Germania National Bank, New Orleans, for $450, dated April 22d, 1874, on German American Bank, New York.

One cash-book, 1874; 20 pages.
One do 1873; 108 do.
One do 1870; 110 do.
One mem. book giving residences.
One cash book, 1869; 112 pages.
Letters patent, Jno. M. Valley, improvement on cloth drying.
Letters patent for manufacturing sole leather, by G. Bottes.
A note due by C. V. Whitfield & Co., New York, for $1,120, dated Oct. 14th, 1874, payable May 1st, 1875.
One note, for $10, of Cape Fear Bank of North Carolina (counterfeit).
One note for $1, Eastern Bank of Ala. (Eufaula), counterfeit.
One model of assignment for vats to tan leather. Mention of all of which is herein made by way of memorandum.
One sole leather trunk, $15.00.
One small iron safe, 5.00.
162 Cash, the sum of six $\frac{87}{100}$ dollars, to credit of deceased, in Germania National Bank, $6.87.

And Messrs. Frank M. Fisk and Henry C. Fisk having declared that the following described properties belong to the succession of Francis M. Fisk, I, the undersigned notary, have made a memorandum of the same, with the values assessed thereon by the city of New Orleans, to wit:

	Purchased.	Assessment.
Lot Poydras and Rocheblave streets, in name of Fisk	1867.	240 00
From lots and improvements cor. Josephine & Fulton streets, in name of Fisk	1866.	6,000 00
Two lots on Jackson street and improvements (Fisk)	1866.	1,800 00
Notre Dame & New Levee streets (M. Benner)	1871.	5,000 00
17 Burgundy street, Anna Conery	1868.	3,500 00
145 New Levee st., 2 lots (E. W. Foster)	1872.	4,000 00
22 Natchez street (A. G. Farwell & Co.)	.....	4,000
Which property, together with certain furniture and movable effects therein contained, and assessed at	.....	14,444 00
Is now in possession of Wm. Grant, agent		
163 of said Farwell & Co., Boston, and which he claims belongs to said firm.		
157 Camp street (Geo. M. Lewis)	.....	$10,000 00
133 & 135 New Levee street (Daniel Weaver)	.....	4,000 00
		$39,984 00

Total appraised of the present inventory, one thousand seven hundred and fifty-one $\frac{87}{100}$ dollars ($1,751.87).

And the said testamentary executrix having hereupon declared that she knew of no other property, moveable or immoveable, rights, or credits due or belonging to the said succession of Francis M. Fisk, deceased, to be herein inventoried, and that nothing had been withheld or divested herefrom, I, said notary, did close the proces verbal of inventory by a recapitulation of the whole.

Recapitulation.

Moveable effects valued at	$1,745 00
Cash in bank amounting to	6 87
	$1,751 87

Thus done and inventoried in my office, at the city of New Or-
164 leans aforesaid, the day, month, and year first above written, in presence of said afore-named witnesses, who hereunto sign their name, together with said appearers, appraisers, and me, said notary, after due reading of the whole.

And now the said Frank M. and Henry C. Fisk refused to sign this act, because the real property, which they allege stands in the name of F. M. Fisk, is not appraised herein.

(Signed) ANNE E. GREENE.
(do.) V. SCHEHR.
(do.) A. MOREL.
(do.) JULIEN MICHEL,
Att'y Abst. Heirs.

(Signed) HARRIS MURPHY.
(do.) JAMES J. WOULFE.
[SEAL.] (Signed) W. J. CASTELL,
Not. Pub..

165 *Oath of testamentary executrix, January 29th, 1875.*

STATE OF LOUISIANA:

Second district court for the parish of Orleans.

No. 37663. Succession F. M. Fisk.

Before me, Jules Vienne, deputy clerk of the second district court for the parish of Orleans, personally came and appeared Mrs. Anne Elizabeth Greene, who solemnly swears that she will well and faithfully perform all and singular the duties of testamentary executrix of the last will and testament of F. M. Fisk, deceased. So he p her God.

(Signed) ANNE E. GREENE.

Sworn to and subscribed before me.
New Orleans, Jan'y 29th, 1875.
(Signed) JULES VIENNE,
Deputy Clerk.

Letters testamentary. Filed February 2d, 1875.

THE STATE OF LOUISIANA:

To all whom these presents may come, greeting:

166 Whereas, Mrs. Anne E. Greene, named and appointed testamentary executrix of the last will and testament of F. M. Fisk, deceased, has applied to the second district court for the parish of Orleans, by petition, praying said court to grant letters testamentary therein:

Now know ye that the said Mrs. Anne E. Greene is hereby authorized and empowered to collect all the goods and effects which were of said F. M. Fisk, deceased, and to make a just inventory thereof, and all other lawful acts to do and perform as testamentary executrix of the said last will and testament.

Witness our hands and the seal of said court, at the city of New Orleans, this second day of February, in the year of our Lord one thou-

sand eight hundred and seventy-five, and the ninety-ninth of the Independence of the United States of America.

(Signed) A. L. TISSOT,
Judge.

(Signed) FRANK PACE, JR., *Clerk.*

167 *Procuration.*

MRS. Anne E. Greene, test'y executrix of F. M. Fisk, to Wm. W. Washburn.

STATE OF LOUISIANA.
Parish of Orleans, City of New Orleans:

By this instrument of procuration be it known that, on this third day of February, in the year of our Lord one thousand eight hundred and seventy-five, and of the Independence of the United States of America the ninety-ninth, before me, William Joseph Castell, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared Mistress Anna Elizabeth Fisk, widow of the late William Greene, of this city, herein acting in her quality of testamentary executrix of the last will and testament of her deceased father, Francis
168 Melbourne Fisk, who declared that she had made and appointed, and does by these presents make, nominate, ordain, authorize, constitute, and appoint, and in her place and stead, William W. Washburn, esq., also of this city, to be her true and lawful attorney in fact, general and special; giving and by these presents granting unto the said attorney full power and authority for her and in her name and behalf, and to her use, to conduct, manage, and transact all and singular her affairs, business, and concerns in and of whatever nature or kind, without any exception or reservation whatever; to open letters of correspondence addressed to her, and to answer the same; to make and endorse promissory notes in the name of constituent, and draw, endorse, and accept bills of exchange; to make checks and draw money out of any bank or banks wherein the same may have been deposited in the name or for the account of constituent; to deposit drafts, bills of exchange, acceptances, and promissory notes or other obligations for collection in any bank or banks and withdraw the same or the
169 amount thereof at pleasure, by check or otherwise; to sell and transfer all or any shares of the capital stock of any bank or banks, or other corporate body or bodies, owned by constituent, and receive and receipts for the dividends due or to become due thereon; to pledge or pawn all or any shares of the capital stock of any bank or banks, or other corporate body or bodies, owned by the said constituent; to make and give any note or notes which may be necessary from time to time for the renewal of the same; to attend to all or any meetings of creditors wherein the said constituent may be interested, and vote in her name on all questions and cases that may be submitted to such meetings; to attend all or any meetings of the stockholders of any bank or banks or other corporate body or bodies wherein the said constituent may be interested, and vote in the name of constituent on all questions and cases that shall or may be submitted at such meeting; to borrow
170 money from any bank or banks or other monied institution or institutions on the notes or obligations of the said constituent drawn by her or by the said attorney, or those of others which shall or may come into the hands of the said attorney for the use of the said constit-

uent, and make other notes or obligations from time to time for the renewal of all such or any part or parts thereof; to sell, transfer and convey, or to mortgage and affect, all or any part or parts of the real, personal, or mixed estate in the name of said constituent, on such terms and conditions as the said attorney shall think fit, and to lease, let, or hire all or any part of the real estate belonging to the said constituent, and receive and receipt for the rent thereof as the same shall fall due, and for the full execution of the purposes aforesaid to make, sign, and execute in the name of the said constituent all acts, whether of sale,
mortgage, lease, release, contract, compromise, covenant, deed,
171 agreement, or otherwise, that shall or may be requested or necessary, and bind the said constituent thereby as firmly as if the same were or had been her own proper acts and deeds; to sign all bonds or other acts required by the revenue department at the custom-house of this district or elsewhere, and to do all the custom-house business whatsoever; to receive and attend to all shipments or consignments of produce, goods, wares, or merchandise that shall or may be made to her, either for her own account and risk, or that of others, and to pursue the instructions of owners, shippers, or others interested therein relative thereto; to receive and acknowledge notices of protest of all or of any bills, drafts, or promissory notes to which the said constituent may be a party, and to act for the said constituent and be her substitute in all cases wherein she may be appointed the agent or attorney of others, and to ask, demand, have, take, and by all lawful ways and means to recover and
receive of and from all and every person and persons whomsoever,
172 body or bodies corporate, all and every such sum or sums of money, goods, debts, property, and effects whatsoever, as now is or are, or may hereafter be, in his, her, or their custody or possession, due, owing, coming, or belonging to her, the said constituent, whether by bond, bill, note, book, debt, account, consignment, bequest, or for and by what other reason or means soever, and to that end, with whom it may concern, to adjust and settle all accounts, and upon recovery and receipt in the premises to make and give good and sufficient discharges and acquittances; to appear before all courts of law and equity, there to do, prosecute, and defend, as occasion shall require, or to compromise, compound, and agree in the premises, by arbitration or otherwise, as the said attorney shall in his discretion think fit; also, to apply for and obtain all and any attachments, sequestrations, injunctions, and appeals, give the requisite security, and sign the necessary bonds. This pro-
curation being specially granted for the purpose of enabling
173 said attorney in fact to represent said constituent in all the acts of her administration as testamentary executrix of the last will and testament of the late Francis M. Fisk, and not otherwise; and generally to do and perform all and every other act, matter, and thing whatsoever as shall or may be requisite and necessary, touching or concerning the affairs, business, and concerns of the said constituent as executrix, as fully, amply, and effectually, and to all intents and purposes with the same validity, as if all and every such act, matter, or thing were or had been herein particularly stated and especially provided for, or as she, the said constituent, could or might do if personally present; also with full power of substitution and revocation. And said constituent hereby agrees to ratify and confirm all and whatsoever the said attorney shall lawfully do or cause to be done by virtue of this act of procuration.

Thus done and passed in my office, at New Orleans aforesaid, the
174 day, month, and year first above written, in the presence of Will-

iam B. Lancaster and Daniel J. Mulligan, witnesses of lawful age, domiciliated in this city, who hereunto sign their names, with said appearer and me, the said notary, after reading of these presents.

(Signed) ANNE E. GREENE.
W. B. LANCASTER.
D. J. MULLIGAN.
W. J. CASTELL,
Not. Pub.

I certify the above and foregoing to be a true copy of the original act extant in my current register.

In faith whereof I grant these presents under my signature and the impress of my seal of office.

New Orleans, February 3d, 1875.

[SEAL.] (Signed) W. J. CASTELL,
Not. Pub.

Petition praying for a sale of moveable property.—Filed February 10th, 1875.

Second district court for the parish of Orleans.

No. 37663. Succession of F. M. Fisk.

To the honorable the second district court for the parish of Orleans:

175 The petition of Mrs. E. A. Green, testamentary executrix of the succession of Francis Melbourne Fisk, respectfully represents:

That in order to save expenses to the succession and to save the furniture and other moveable property of the succession from deterioration it is necessary to sell them at auction.

Wherefore she prays that all the furniture and other movable property described in the inventory of the succession be sold according to law, at public auction, for cash, by S. Guinault, esq., public auctioneer in this city.

(Signed) LANCASTER & TISSOT,
Atty's for Petitioner.

Let the sale within prayed for be made by S. Guinault, auctioneer, for cash, after the legal delays and publication and according to law.

New Orleans, February 10th, 1875.

(Signed) A. L. TISSOT, *Judge.*

176 *Supplemental petition.—Filed February 13th, 1875.*

No. 37663. Second district court for the parish of Orleans.

Succession of F. M. Fisk in the honorable the second district court for parish of Orleans.

The supplemental petition of Anna Eliza Fisk, widow of William Greene, testamentary executrix of the succession of F. M. Fisk, respectfully represents:

That she has applied to this court for an order to have the moveable effects of the succession to be sold by S. Guinault, esq., public auctioneer of this city. She represents further that Mr. Guinault cannot act

in the premises, and that it is necessary to nominate and appoint another auctioneer to sell said property as prayed for in the premises.

Wherefore petitioner prays the court to nominate and appoint in place of St. Guinault, auctioneer, Girardey, esq., public auctioneer, to sell the said property as prayed for in the original petition*er*.

(Signed) LANCASTER & TISSOT,
Of Counsel.

177 *Order.*

Let this supplemental petition be filed and let C. E. Girardey be appointed as auctioneer herein in lieu and stead of S. Guinault previously appointed by this court.

New Orleans, February 13th, 1875.

(Signed) A. L. TISSOT, *Judge.*

Motion to substitute.

Second district court for the parish of Orleans.

Succession of F. M. Fisk.

On motion of Lancaster and J. L. Tissot, of counsel for Mrs. Anne E. Greene, executrix of the succession of F. M. Fisk, and on showing to the court that by special power of attorney executed before N. Proctor Smith, a commissioner for the State of Louisiana, and resident in the city and county of San Francisco, State of California, on the 11th day of December, 1875, the said executrix has substituted Richard Rhodes, residing in this city, as her true and lawful attorney, as executrix as aforesaid in the place and stead of W. W. Washburn, who was acting
178 as such in her behalf for the purpose of administering the said succession, it is ordered by the court that the said power of substitution be filed in court in the mortuary proceedings of said succession, and that the said Richard Rhodes be and he is hereby recognized as the lawful attorney in fact of the said executrix for the purpose of representing her and acting in her aforesaid capacity in said succession.

Opposition to account of Dr. J. M. Cullen.—Filed July 19th, 1876.

No. 37663. Succession of F. M. Fisk.

To the hon. the judge of the second district court for the parish of Orleans:

The opposition of Dr. J. M. Cullen, a duly licensed physician of this city, respectfully shows that in the month of December, 1874, during the last illness of deceased, he rendered medical services in consultations with Dr. Hawthorn, the attending physician of deceased; that his
179 services are well worth the sum of thirty dollars; that the testamentary executrix has presented a tableaux and account of distribution to this hon. court in which she has omitted and refuses to recognize or place him on said tableaux as a privilege' creditor of *of* the last illness.

Petitioner specially opposes each and every item on said tableaux, and prays the court to order that said tableaux be amended as to place

him on said account and his opposition maintained so as to place as a creditor for the sum of thirty dollars and classed amongst the 3d class privileges (last illness), and he further prays for general relief.

(Signed) M. B. DU BUISSON, *Att'y.*

Petition for filing and homologating a provisional acc't.—Filed August 10th, 1876.

Second district court for the parish of Orleans.

No. 37663. Succession of F. M. Fisk.

To the honorable the second district court for the parish of Orleans:

180 The petition of Mrs. A. E. Greene, testamentary executrix of the succession of F. M. Fisk, actually in San Francisco but duly represented by Richard Rhodes, who resides in this city of New Orleans, respectfully represents that her former agent, W. W. Washburn, esq., has rendered an account of administration in said succession, which account she presents now as her provisional account in said succession.

Wherefore petitioner prays that said provisional account be duly published and the funds in her hands distributed accordingly.

(Signed) W. B. LANCASTER &
J. L. TISSOT,
Attorneys for Pet'r, by J. L. Tissot.

Order.

Let the account herewith filed be advertised according to law.
New Orleans, August 15th, 1876.

(Signed) A. L. TISSOT, *Judge.*

Provisional account.—Filed August 10th, 1876.

181 W. W. Washburn, agent, in a/c with succession of F. M. Fisk,

DR.

1874.				
Dec.	26.	Drayage on trunk & safe		50
	29.	Gas for Nov. of house 157 Camp st	41	
		Drayage on trunk and safe again		50
1875.				
March	6.	J. J. West, keeper, 5 days, @ 157 Camp st	5	
	9.	Ann Conery, to vacate premises	152	80
	20.	Gas, in full to date, 157 Camp st	8	15
		Messrs. Speer & Speer, cash remitted	34	75
	22.	Chas. Hicks' bill	8	50
		William Foss' "	4	50
		Mrs. Branagan	5	
April	2.	Postage stamps	1	
	3.	Burial expenses of F. M. Fisk	109	50
	5.	Dr. Hawthorn's professional services to F. M. Fisk	110	

	6.	David Close' bill	52	80
	15.	Kitty Holloran, cash	5	
	30.	Houston, "	10	
May	7.	Kitty Holloran, "	5	
	10.	Richelieu' bill	1	50
		Lock for gate on Jackson st		50
	18.	Kitty Holloran, cash	5	
		Mary Thompson Clayn	150	
June	11.	Heath & Lara' bill	4	40
July	15.	Kitty Holloran, judgment	165	
		Do. do. cash	5	
	19.	W. B. Lancaster, cash on a/c	41	
	Aug.	9. Clerk's costs in second district court	10	
182		Appraiser's bill	30	
	Aug.	14. Clerk's costs in succession of F. M. Fisk.	64	
		F. M. Fisk's, jr., order of burial expenses of F. M. Fisk's, jr., child, dated June 5, 1874	8	
	25.	C. K. Kessler' bill for repairing furniture	10	50
Nov.	22.	Sheriff's fees in suit 26070	6	
Dec.	2.	F. M. Fisk, jr., order from court	150	
		H. C. Fisk " " "	150	
	21.	F. M. Fisk, sr., v. s. 22049, & Jno. L. Larische costs	9	
	1876.			
Jan'y	27.	W. W. Washburne, for services in succession of F. M. Fisk	150	
			$1,513	90
		To balance	5	13
			$1,519	03

1875. Cr.

		C. E. Girardey, a/c sales of furniture sold at No. 157 Camp st	$1,297	15
		F. M. Fisk's a/c in Germania Bank	180	58
April	20.	P. A. Barkes' bill	18	75
	1876.			
Jan'y	27.	Sundry items cash collected	22	75
			$1,519	03

By balance, $5.13.

(Signed) MRS. A. E. GREEN,
Test'y Ex'tr'x.
Ppro RICHARD RHODES.

(Signed) MRS. A. E. GREEN,
Test'y Ex'tr'x.
Ph. W. W. WASHBURNE.

183 *Motion and order annexed to foregoing.*

Second district court for the parish of Orleans.

No. 37663. Succession of F. M. Fisk.

On motion of Hornor & Benedict, and upon showing to the court that

the account herein filed by the executrix was duly published according to law, and that but one opposition has been filed thereto, though the legal delays have elapsed, as evidenced by the clerk's certificate herewith filed, it is ordered that the said account be approved and homologated in so far as not opposed.

Judgment rendered August 29, 1876.

Judgment signed September 5, 1876.

(Signed) A. L. TISSOT, *Judge.*

Deposition of Jules Vienne.

Second district court for the parish of Orleans.

No. 37663. Succession of F. M. Fisk.

Jules Vienne, being duly sworn, says that the advertisements
184 for the homologation of the account presented by the testamentary executrix in the above-entitled matter have been published in the New Orleans Republican, the newspaper selected pursuant to law for the publication of judicial advertisements, on the 16, 17, 18, 22, and 25 August, 1876, in the English language, and that one opposition has been filed thereto.

(Signed.) JULES VIENNE.

Sworn to and subscribed before me this 29 day of August, 1876, and certified correct.

(Signed) FRANK PACE, JR., *Clerk.*

Petition and account.—Filed Sept'r 5th, 1877.

Second district court, parish of Orleans.

No. 37663. Succession of F. M. Fisk.

The petition of Mrs. A. C. Greene, ex'r, resp. shows:

That she files on the reverse hereof a supplemental, provisional account of administration herein.

Wherefore she prays that after due publication thereof the
185 same be homologated and payments ordered in accordance therewith, and for general relief.

(Signed) A. L. TISSOT AND
W. B. LANCASTER,
Att'ys.

Account Richard Rhodes, a/t ex'tr'x, in a/c with succession of F. M. Fisk.

DR.

Dec'r 7. To Clark & Hofeline, printing brief Weaver vs. Fisk		7
" Transcript Foynet		19
" att'ys' fees, Tissot & Lancaster, att'ys ex'r		300
" notary's, W. Castell, bill & inventory		50
" clerk's costs, 4th dist. court, Green vs. Conery		12 75
" am't paid heirs Frank and Henry Fisk, sundry times, by pl'ff		166 38

	To sheriff's costs, 17 Burgundy st	128	62
	" clerk's costs, 2d dist. court	80	
	" reserved	30	
	" bill Nash & Hodgson, auctioneers	78	15
	" am't paid taxes, 17 Burgundy st	250	
	" discount on sale mortgage notes	65	45
	" additional fees, sheriff making title, &c	11	50
	" sheriff's commission collecting rents	15	
	" bill Richard Rhodes	56	87
	" " sheriff's costs, suc'n F. M. Fisk	12	
	" " " " Fisk vs. Weaver	1	
	" att'y's fee in suit of Greene, executrix, vs. Anna Conery in 4th dist. court, J. L. Tissot & W. B. Lancaster	200	
186	To balance	157	00
		$1,641	13

NOTE.—The clerk's costs above, referred to this succession and the suit of F. & H. Fisk vs. suc'n of Fisk, 2d dist. court.

The sheriff's costs are Waggaman, $480; Hardy, $80.12.

1877.	CR.		
June,	by proceeds real estate, 17 Burgundy	1,275	
"	bal. due on old ⅜ filed in 2d court	5	13
"	rent collected by sh'ff, 17 Burgundy st., up to June, 1877, Waggaman & Hardy	320	
"	am't to be charged to W. B. Lancaster, att'y, as paid on his fee by W. W. Washburn	41	
		$1,641	13

By balance, $157.41.

Judgment annexed to above account.

No. 37663. Succession of F. M. Fisk.

For the reasons assigned in the written opinion of the court this day delivered and on file, it is ordered, adjudged, and decreed that the opposition of Julien Michel, curator ad hoc, to the account of Richard
187 Rhodes, agent of the executrix herein, filed on the 5th of September, 1877, be maintained; that said opponent be recognized as a privileged creditor of this estate and as such placed on the account for the sum of fifty dollars. That the opposition of Eugene Waggaman, late sheriff, to said account be maintained; that said opponent be recognized as a privileged creditor of this estate for the sum of forty-four dollars and as such placed on the account.

That the opposition of O. M. Tennyson to said account be maintained in so far only as to recognize him as a privileged creditor of this estate for the sum of $75.60 with legal interest thereon from the 20th December 1876, until paid, and that in all other respects said opposition be dismissed; that the opposition of Hornor & Benedict, esq., to said account be maintained in so far as to recognize said opponents as privileged creditors of this estate for the sum of $150.00, and as such be placed on the account, and that in all other respects said opposition be dismissed.

188, 189 That the opposition of the city to said account be maintained, and accordingly said opponent be recognized as a privileged creditor of this estate for the sum of sixty dollars, with 10 % per annum from July 31, 1869. $2.00 for clerk and 75 c. for advertising, and as such placed on the account.

It is further ordered, adjudged, and decreed, that said account of the agent of the executrix as above amended, be finally approved and homologated, and the funds of this estate be distributed in accordance therewith, the succession to pay the costs.

Judgment rendered January 15, 1878.

Judgment signed January 19, 1878.

(Signed) A. L. TISSOT, *Judge.*

Opposition of O. M. Tennison.—Filed Sept'r 7th, 1877.

Second district court.

No. 37663. Succession of F. M. Fisk.

The petition of opposition of Otto M. Tennison to the final account herein filed by the testamentary executrix, shows with respect:

190 That he is a creditor of said succession in the sum of seventy-five $\frac{60}{100}$ dollars, with interest from the 20th day of December, 1876, as per judgment of the fourth district court for the parish of Orleans, rendered in the suit of Mrs. A. E. Greene, testamentary executrix of the succession of F. M. Fisk vs. Ann Conery, No. 43989 of the docket; that your opponent has not been placed upon said account as such judgment creditor, and he is entitled to be placed thereon with the privilege of law charges, and your opponent specifically opposes the following items in said account, viz: Transcript, $19, as not being due by the estate of F. M. Fisk.

Attorneys' fees of Tissot and Lancaster, three hundred dollars, as excessive, the inventory showing a total assets of $1,751.87.

Bill of Richard Rhodes, $57.80, is opposed as not due by the estate, and as not setting forth for what the same is due by any one.

Wherefore your opponent prays said account be amended, by placing him thereon for the said sum of $75.60, with legal interest from

191 the 20th December, 1876, and otherwise amending the same in accordance with the foregoing opposition.

And he prays for general relief.

(Signed) HORNOR & BENEDICT,
Att'ys.

Copy of judgment on rule annexed to above petition.

STATE OF LOUISIANA:

Fourth district court for the parish of Orleans.

Friday, the fifteenth day of Dec'r, 1876.

Present, Hon. B. L. Lynch, judge of the superior district court, presiding during the absence of Hugh J. Campbell, judge of this court.

MRS. A. E. GREEN *vs.* ANN CONERY. } No. 43989.

The rule taken herein by O. M. Tennison, short hand reporter, on the

5th inst., having been submitted to the court, and the court considering the law, and the evidence being in favor of said O. M. Tennison, short-hand reporter, it is ordered and decreed that said rule be made absolute in so far as to make Mrs. A. E. Green, testamentary executrix, responsi-
192 ble for the payment of the expert fees taxed as costs in this case, and amounting to seventy-five $\frac{60}{100}$ dollars ($75.60).

Judgment signed, Dec'r 20, 1876.

(Signed) F. F. PALM,
Deputy Clerk.

Extract from minutes.

Opposition of Hornor & Benedict.—Filed October 12, 1877.

Second district court.

No. 37663. Succession of Francis M. Fisk.

Now into court come Hornor & Benedict, a law firm, composed of Joseph P. Hornor and W. S. Benedict, and oppose the account herein filed by the testamentary executrix, and for cause show:

That at the instance of said executrix and her attorney, Mr. J. L. Tissot, your opponents rendered legal services in an injunction suit taken out by Ann Conery against the executrix, in suit No. 43989, of the fourth district court for the parish of Orleans, wherein the said executrix was claiming the right to seize and sell a certain piece of real estate
193 located in this parish, upon mortgage notes amounting to the sum of $8,000, and in said injunction suit an issue was raised as to the ownership of said mortgage notes, said trial being protracted and involving a vast amount of evidence and requiring particular and special attention and investigation, and which trial resulted in a judgment in favor of said executrix.

That in said suit five per cent. attorneys' fees were awarded by the act of mortgage foreclosed, and ten per cent. damages were awarded by the court, none of which have your opponents received, nor have they now any further connection with said suit, as they are informed by Mr. W. B. Lancaster, as the attorney of Richard Rhodes, agent of the executrix.

Your opponents specially adopt, and herein reiterate, the allegations and opposition of O. M. Tennison, herein filed, and they further allege that they are entitled to a reasonable compensation for their services rendered in the trial of said injunction suit, and that they should be placed upon the account herein, and that the item in said account
194 of attorneys' fees in the suit of Green, executrix, vs. Ann Conery, in the fourth district court, of J. L. Tissot and W. B. Lancaster, be stricken from said account as not due, and that a reasonable amount be awarded by this honorable court to your opponents for their services in said suit.

Wherefore they pray that they be placed upon said account in such sum as to the court may seem just and proper in the premises, and that said account be otherwise amended in accordance with the foregoing opposition.

And they pray for general relief.

(Signed) FRANCIS W. BAKER,
Att'y for Opponents.

Opposition to account and tableaux.—Filed Oct. 20, 1877.

Second district court for the parish of Orleans.

No. 37663. Succession of F. M. Fisk.

And now into court comes the City of New Orleans, and in answer to the published notice of the filing of an account by the test. exec-
195 utrix, opposes and objects to said account filed and the distribution thereby intended to be made for this:

That the decedent, his executrix, and his estate and heirs, are indebted and bound unto opponent in the full sum of sixty dollars, exclusive of interest and costs due for taxes imposed by the city in the lawful exercise of its powers as will more fully appear by the statement hereto annexed and made part hereof.

That opponent had and has a real right in and upon all the property of the above succession, and a lien and privilege duly recorded, upon all said property and the proceeds thereof, entitling her to be paid before any and all creditors of said succession, and that said property is bound in pledge to opponent as security for all the taxes claimed.

Nevertheless opponent is not placed upon said account and tableaux as the first creditor, to be paid from the funds of said estate and the proceeds of its property, nor has the full amounts—principal, in-
196 terest, and costs—been allowed.

Opponent further avers that a final judgment has been rendered for the said tax, and the same, with interest and costs, should be placed on the account, as the first privilege, in addition to all taxes allowed thereon, and that it should be paid in preference to all other demands.

Wherefore opponent prays that judgment be given for the said tax and demand aforesaid, interest and costs, directing the same to be put on the account in addition to the taxes allowed, and that the item be so placed on said account, and paid with such taxes as are thereon allowed to the city, in preference to all other demands and items on said account for costs and general relief.

(Signed) JAS. H. GROVER,
Ass't'y City Att'y.

(Signed) SAM'L. P. BLANC,
Of Counsel.

197 *Account attached to foregoing opposition.*

Statement of unpaid taxes, costs, and interest due and bearing on the property described on first page.

Year.	No. bill.	Name.	Amount of tax.	Interest, costs, and charges.	No. of suit and court.	Registry.	Remarks.
1868.....	2,165	A. J. Da Silva...	60 00	10 % interest per annum from July 31, '69.... Clerk, $2 00..... Adv'g, 75 c.....			

198 *Opposition of curator ad hoc.—Filed Oct. 20th, 1877.*

No. 37663. Succession of F. M. Fisk.

In the honorable the second district court for the parish of Orleans:

The petition of opposition of Julien Michel, of this city of New Orleans, parish of Orleans, State of Louisiana, respectfully represents:

That he has been regularly appointed ad hoc of Mrs. Ann Elizabeth Green, test'y executrix of deceased, and has accepted said trust and acted professionally under said appointment by correspondence, appearance in court, consultation with the parties in interest, as the record herein shows and discloses.

That his services for such are fully worth the sum of fifty dollars, which he now claims as a privileged creditor.

That by error he has not been placed on the tableau herein filed as a final account by the testamentary executrix.

199 Wherefore opponent prays that said account be amended by placing him thereon for said amount of fifty dollars, as claimed, and for general relief.

(Signed) JULIEN MICHEL,
Att'y at Law and Curator ad hoc.

Opposition of late sheriff.—Filed Oct. 22d, 1877.

No. 37663. Succession of F. M. Fisk.

To the honorable the judge of the second district court for the parish of Orleans:

The opposition of Eugene Waggaman, late sheriff of the parish of Orleans, most respectfully represents:

That he opposes the account and tableaux presented by Mrs. Eliza Green, executrix in the estate of F. M. Fisk. That the said estate of F. M. Fisk is justly and truly indebted unto your opponent in the full sum of forty-four dollars for sheriff's costs incurred during the administration of the above-named estate, as will more fully appear by reference to the bill hereto annexed and made part of this opposition.

200 That the said executrix has failed or neglected to place your opponent on the said account and tableau for the amount of his claim. That his said claim is of a privileged nature, and should be placed as such among the law charges.

Wherefore opponent prays that there be judgment in favor of your opponent for the sum of forty-four dollars, together with costs, and that said account and tableau be amended by placing thereon your opponent's claim as that of a privileged creditor, according to his rank of privilege, and that said account and tableau so amended be approved and homologated, and the funds distributed accordingly.

And as in duty bound, &c.

(Signed) BRAUGHN, BUCK & DINKELSPIEL,
Of Counsel for Opponent.

Bill attached to opposition.

CIVIL SHERIFF'S OFFICE,
Parish of Orleans:

2d district court for the parish of Orleans.

No. 37663. Succession of F. M. Fisk.

201 I hereby certify that the sheriff's fees in this case due Eugene Waggaman amount to twelve $\frac{50}{100}$ dollars.
New Orleans, Dec'r 7th, 1876.
(Signed) JOHN LEECH,
Deputy Sheriff.

Bill attached to opposition.

CIVIL SHERIFF'S OFFICE,
Parish of Orleans:

No. 37857. 2d district court for the parish of Orleans.

F. M. & H. C. FISK
vs.
MRS. ELIZA GREEN, EXECUTRIX.

I hereby certify that the sheriff's fees in this case due Eugene Waggaman amount to thirty one $\frac{50}{100}$ dollars.
New Orleans, Dec'r 7, 1876.
(Signed) JOHN LEECH,
Deputy Sheriff.

Testimony of Julien Michel, taken Nov. 13 and filed Nov. 14, 1877.

Second district court for the parish of Orleans.

No. 37663. Succession of F. M. Fisk.

202 In open court, Nov. 13, 1877.

Julien Michel says: I offer in evidence the motion filed Oct. 27 by Hornor & Benedict asking that a curator ad hoc be appointed, and I was appointed as such.

I offer the notice of appointment served upon me personally, which I have accepted; I offer the answer filed in that suit, filed on the 16th Nov., 1875; also all that portion of the record which shows my different appearances in court, and the reasons why I have appeared defending the party, as I had been appointed by the court to represent said party under the circumstances.

May it please the court, I consider my services well worth $50.

Testimony taken Jan'y 4th and filed Jan'y 9th, 1878.

Second district court for the parish of Orleans.

No. 37663. Succession of F. M. Fisk.

In open court, Jan'y 4, 1878.

203 Admission: It is admitted that Messrs. Hornor and Benedict are entitled to be placed on the account herein for the sum of $150.00.

The stenographer O. M. Tennison's bill, for $75, is admitted correct.
The opposition of Chas. Michel, for $50, is also admitted.
The sheriff's bill is also admitted.

Petition to be placed in possession.—Filed January 29th, 1878.

Succession of F. M. Fisk. No. 37663.

Second district court.

The petition of F. M. Fisk and Henry C. Fisk, of this city, with respect, represents:

That they are two of the heirs of deceased, duly recognized as such, each in an interest of one undivided eighth, by judgment of this honorable court.

That said estate has been under administration for several years; that no debts exist as appears by the accounts herein filed and
204 homologated after due notice, and they are desirous of accepting the said succession under benefit of inventory, and of being placed in possession of their interest therein.

Wherefore they pray that, after due notice to the testamentary executor herein, they be sent into possession of the said estate under benefit of inventory, each for an undivided one-eighth part thereof.

And they pray for costs, and for all general relief.

(Signed) HORNOR & BENEDICT, *Att'ys.*

S rvice accepted and citation waived.

(Signed) W. B. LANCASTER,
Att'y for Mrs. Green, Ex'x.

*(Page 206.) Exception to petition.

Answer to petition of F. M. & H. C. Fisk to be put in possession.—Filed March 15, 1878.

Succession of F. M. Fisk. No. 37663.

In 2d dist. court, p'h of Orleans.

Now comes defendant, being on the petition of F. M. and H. C.
205 Fisk, to be put in possession, under benefit of inventory, and for answer pleads the general denial, and for further answer says that there are debts of this succession unpaid; that there is a suit now pending in the supreme court of this State wherein this respondent is plaintiff and Ann Conery is defendant, which is now fixed for trial, and that in said suit there is question of an indebtedness of this succession to the extent of all the proceeds of sale of property on Burgundy street, in this city, accounted for as assets in this respondent's last account filed, viz. for ($1,500) fifteen hundred dollars; that some of the debts recognized by this hon. court in homologating respondent's last account as amended remain unpaid, viz, the fees of respondent's attorneys, J. L. Tissot and W. B. Lancaster, the taxes added on opposition, the fee of W. J. Castell, notary, and others, and that the other heirs in this

succession have not joined nor been made parties herein. Wherefore respondent asks to be hence dismissed, with costs.

206 (Signed) J. L. TISSOT AND
W. B. LANCASTER,
Of Counsel.

* *Exception to petition.—Filed Feb'ry 9th*, 1878.

Succession of F. M. Fisk. No. 37663.

In second dist. court, parish of Orleans.

Now comes the test'y ex'x, through her duly authorized representative, R. Rhodes, and for exception to the petition of F. M. Fisk and H. C. Fisk, filed Jan'y 29, '78, asking to be put in possession, &c., says that there is no cause of action set forth in said petition, and no relief asked which is known to the law.

Wherefore she asks to be hence dismissed, with costs.

(Signed) W. B. LANCASTER,
Of Counsel.

Order on exception.

Succession of F. M. Fisk. No. 37663.

207 The exception herein filed to the petition of F. M. Fisk and H. C. Fisk filed herein on the 29 January, 1878, came on for trial—present, Hornor & Benedict, attorneys for petitioner; W. B. Lancaster & J. L. Tissot, esq., att'ys of exceptor—when, after hearing evidence and counsel, and for the reasons orally assigned by the court, it is ordered that said exception be overruled.

Judgment rendered March 11, 1878.

Judgment signed March 15, 1878.

(Signed) A. L. TISSOT, *Judge.*

Judgment on the petition, &c.

Succession of F. M. Fisk. No. 37663.

This cause came on this day for trial on the petition of F. M. Fisk and Henry C. Fisk, heirs of the deceased, to be "placed in possession," filed on the 29th January, 1878—present, Hornor & Benedict,
208 esq'r, att'ys of petitioners; W. B. Lancaster, esq., att'y of executrix—when, after hearing evidence, counsel, and pleadings, and the court considering the law and the evidence to be in favor of said petitioners, and that they are entitled to the relief prayed for in their petition, it is ordered, adjudged, and decreed that the said petitioners, F. M. Fisk and Henry C. Fisk, heirs of the deceased, be sent into possession of the estate of the said F. M. Fisk, deceased, under benefit of inventory—each for an undivided one-eighth part thereof.

Judgment rendered April 25th, 1878.

Judgment signed April 30th, 1878.

(Signed) A. L. TISSOT, *Judge.*

Testimony—Filed May 1st, 1878.

Second district court for the parish of Orleans.

No. 37663. Succession of F. M. Fisk.

In open court, April 25, 1878.

209, 210 Mr. Baker offers in evidence the record of this succession and the last tableau and account.

The decision of the supreme court in the case of Green vs. Conery, showing that there was a final judgment rendered in that case in favor of the succession of Fisk.

ADMISSION.—It is admitted that Messrs. Tissot and Lancaster have received $300, and Castell, notary, $40.

Mr. BENEDICT (to Mr. Lancaster). Mr. Lancaster, on the last account homologated herein appears attorney's fees in the case of Green vs. Conery, $200; wasn't there an opposition filed to that by Hornor & Benedict, in which they said they were entitled to the fee, because they did all the work in that case?

Mr. LANCASTER. Yes; if——

Mr. BENEDICT. After they had filed their opposition, didn't you ask them if they would consent to take $100? They agreed to it, and a judgment was entered up for $150. Wasn't that item placed
211 on the account in your favor for $200?

Mr. LANCASTER. Mr. Tissot managed that part of the case. He told me his fee was on the account for $200, but he took no receipt for it.

Mr. BENEDICT. I offer in evidence the final judgment of this court, rendered upon the application of F. M. Fisk, jr., and H. C. Fisk, recognizing them as heirs of the deceased F. M. Fisk, No. of the docket of this court.

Mr. LANCASTER. I offer in evidence the certificate of the clerk of the supreme court, showing that this cause of Ann Green vs. Conery is now pending on a motion for a rehearing.

Copy of letters of executorship issued to Mrs. Ann Green.

Offered by complainant.

Second district court for the parish of Orleans.

212 Succession of F. M. Fisk. No. 37663.

The State of Louisiana to all whom the presents may come, greeting:

Whereas Mrs. Anne E. Green, named and appointed testamentary executrix of the last will and testament of F. M. Fisk, deceased, has applied to the second district court of the parish of Orleans by petition, praying said court to grant letters testamentary therein:

Now, know ye that said Mrs. Anne E. Greene is hereby authorized and empowered to collect all the goods and effects which were of said F. M. Fisk, deceased, and to make a just inventory thereof, and all other lawful acts to do and perform as testamentary executrix of the said last will and testament.

213 Witness our hands and the seal of said court, at the city of New

Orleans, this second day of February, in the year of our Lord one thousand eight hundred and seventy-five, and the ninety-ninth of the Independence of the United States of America.

[SEAL.] (Signed) A. L. TISSOT, *Judge.*
(Signed) FRANK PACE, JR., *Clerk.*

A true copy.
(Signed) EUG. D. HENTE,
Dy Clerk.

214 *Sale of 6th April, 1876, by the assignee of the estate of F. M. Fisk, bankrupt to Clay W. Green, and certificate of its recordation.*

Offered by defendants.

Sale of property, estate of F. M. Fisk, bankrupt, to Clay W. Green.

JULY 6TH, 1876.

This indenture made and entered into this 6th day of April, 1876, by and between Charles W. Goddard, of the city of Brooklyn, county of Kings, State of New York, as assignee in bankruptcy of the estate of Francis M. Fisk, late of the said city of Brooklyn, deceased, party of the first part, and Clay W. Green, of San Francisco, State of California, party of the second part, witnesseth that whereas the said Francis M. Fisk did heretofore, to wit, on or about the 27th day of December, 1871, present his petition to the district court of the United States in bankruptcy
for the eastern district of the State of New York, praying, among
215 other things, that he might be adjudged a bankrupt, and such proceedings were had in said court that the above-mentioned Charles W. Goddard was duly chosen and appointed assignee in bankruptcy of the estate of the said Francis M. Fisk, and thereupon, to wit, on or about the 7th day of February, 1872, an assignment of all the estate, property, and effects of the said bankrupt was duly made, pursuant to the act of Congress of the United States, to the said party of the first part; and whereas, under and pursuant to the power and authority vested in him by law and by virtue of such appointment and assignment, said party of the first part did, afterwards and on the 6th day of April, 1876, sell, at public auction at the Commercial Exchange, in the city of Brooklyn, all the rights, title and interest which the said Francis M. Fisk had, at the time of the filing of said petition, in and to the real estate hereinafter mentioned, due notice of the time and place
216 of such sale being first given according to law, and the practice and order of the said court, at which sale all the right, title and interest of said Francis M. Fisk, as aforesaid, in and to the property hereinafter described, were struck off to the said party of the second part for the aggregate sum of $650.00, that being the highest sum bidden for the same.

Now this indenture witnesseth that the said party of the first part to these presents, in order to carry into effect the sale so made by him as aforesaid, and in conformity with law, and the purposes and objects of said assignment, and also in consideration of the premises and of the said sum of money so bidden as aforesaid being first duly paid by said party of the second part, the receipt whereof is hereby acknowledged, hath bargained and sold, and by these presents doth grant and convey unto the said party of the second part, and his heirs and assigns, all the rights, title and interest which the said Francis M. Fisk had

217 at the time of the filing his petition aforesaid in and to the following described pieces and parcels of real estate situated in the parish of Orleans, in the State of Louisiana, to wit:

1st. Two lots of ground, situated in the city of New Orleans, known as Nos. 4 and 5 in square 43 (city plan) in the 4th district, bounded by Jackson, Josephine, Fulton and Rousseau streets, being the same premises described in a certain act before A. Mazureau, dated March 26, 1866, made by the Society for the Relief of Destitute Orphan Boys to said F. M. Fisk, and recorded in book 90 of conveyances in the office for the Record of Deeds in said city, at folio 566.

2d. Four lots of ground, on the same plan and square, adjoining each other, known as Nos. 11, 12, 13 & 14, being the same premises described in above act of Mazureau made by said society to said F. M. Fisk.

3d. A lot of ground, with buildings thereon, situated in the 1st
218 district, square 18 (city plan), in said city, bounded by Notre Dame, New Levee, Girod & Fulton streets, known by No. 10, being the same premises described in an act before C. S. Sauvinet, sheriff, dated Aug. 7th, 1871, and recorded in book 100 of conveyances in the aforesaid office at folio 189.

4th. A lot of ground situated in 1st district of said city, known as No. 8, in square 18, on a plan of J. A. Beard, in office of H. B. Cenas, bounded by New Levee, Girod, Fulton and Notre Dame streets, being the same premises described in an act before Theodore Guyol, N. P., dated April 3, 1862, made by Pat. Irwin, to said F. M. Fisk, and recorded in book 87 of conveyances of said parish, at folio 407.

5th. A lot of ground known as No. 9, in same square and plan last above mentioned, being the same premises described in an act before Geo. W. Christy, N. P., dated March 21st, 1866, and recorded in book 94 of records of said parish, at folio 135.

6th. A lot of ground in square 95, known as No. 92 of said
219 square, in said city, bounded by Canal, Rampart, Custom-house and Burgundy streets, in the 2d dist., being the same premises described in an act before J. Cuvellier, dated Feb'y 10, 1870, recorded in book 97 of said records, at folio 431.

7th. A lot of ground in the 1st dist. of said city, known as No. 1, in square 13, on plan of Castaing and Celles, dated March 20th, 1866 (square 574, city plan), bounded by Poydras, Rocheblave, Perdido and Dorgenois streets, being the same premises described in an act before A. E. Bienvenu, dated May 28, 1866, and recorded in book 92 of the records of said parish, at folio 522.

To have and hold all the right, title and interest aforesaid of the said Francis M. Fisk in and to all and singular the premises above mentioned and described unto the said party of the second part, his heirs or assigns, for his and their own proper use, benefit and behalf.

In witness whereof the said Charles W. Goddard, as assignee
220 in bankruptcy of the estate of the said Francis M. Fisk, hath hereunto set his hand and seal the day and year above mentioned.

(Signed) C. W. GODARD,
Assignee.

Sealed and delivered in presence of—
CHARLES EDGAR MILLS.
WM. REED.

CHARLES NETTLETON.
Comm'r for La. in New York.

STATE OF NEW YORK,
City and County of New York, ss:

Be it remembered that on this 2d day of May, A. D. 1876, before me, Charles Nettleton, a commissioner of the district of Louisiana in New York, residing in said city of New York, personally appeared C. W. Godard (assignee), to me well known to be the individual named in, and who executed the foregoing instrument, and acknowledged to me that he did sign and deliver the same as his free act and deed on the day and year therein mentioned, and for the consideration, uses and purposes therein expressed.

In witness whereof I have hereunto set my hand and affixed my official seal this 2d day of May, A. D. 1876.

221 [SEAL.] (Signed) CHARLES NETTLETON.
Commissioner for Louisiana in New York,
No. 117 Broadway, N. Y. City.

NEW ORLEANS, *June 6*, 1876.

(Signed) C. B. FISH, *Reg.*

I, the undersigned register of conveyances in and for the parish of Orleans, State of Louisiana, do hereby certify that the within instrument of writing is a true and correct copy of an act registered on the sixth day of June, 1876, in book 107, folio 482, of this office.

New Orleans, March 8th, 1877.

[SEAL.] (Signed) C. B. FISH, *Reg.*

Transfer from Milton Benner to Chas. W. Goddard.

Offered by defendant.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Be it known that on this day of , in the year of our
222 Lord one thousand eight hundred and seventy five, and of the Independence of the United States of America the one hundredth, before me, William Joseph Castel, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeard Milton Benner, esq., of this city, who declared that for the consideration hereinafter expressed he does by these presents grant, bargain, sell, convey, transfer, assign, and set over, with a full guarantee against all troubles, debts, mortgages, claims, evictions, donations, alienations, or other incumbrances whatsoever, unto Charles W. Goddard, esq., of the city and State of New York, assignee of the bankrupt estate of Francis M. Fisk, herein represented by his agent, Charles Henry Washburn, present, accepting and purchasing for said C. W. Goddard,
223 assignee, his executors and assigns, and acknowledging delivery and possession thereof, a certain lot of ground, together with all the buildings and improvements thereon, rights, ways, advantages thereunto belonging, or in any wise appertaining, situate, lying and being in the first district of this city, in the square bounded by Notre Dame, New Levee, Girod, and Fulton streets, and designated by the number ten on a plan known as the plan of J. A. Beard, duly certified by Hugh Grant, surveyor, under date the twelfth of January, 1852, and deposited in the office of H. B. Cenas, late a notary public in this city,

for reference, measuring twenty-three feet eight inches and six lines front on New Levee, and twenty-three feet nine inches and six lines front on Fulton street, by a depth of one hundred and twenty-one feet seven inches and five lines on the line which divides it from lot number nine, and one hundred and twenty-one feet nine inches and one line in
224 depth and front on Notre Dame street; being the same property which the present vendor acquired by purchase from C. S. Sauvinet, sheriff of the parish of Orleans, at a sale thereof made by said sheriff by virtue of a writ of seizure and sale to him directed by the honorable the sixth district court for the parish of Orleans, at the suit of J. Davidson and Hill vs. F. M. Fisk, No. 2607 of the docket of said court, the whole as per sheriff deed dated 7th August, 1869, duly registered in the conveyance office in this city, in book 100, folio 189, and duly recorded in the clerk's office of said 6th district court, in deed book No. 5, folios 83, 84, 85, 86, 87, and 88.

Copy of certificate of recorder of mortgages.

STATE OF LOUISIANA,
Parish of Orleans:

OFFICE OF RECORDER OF MORTGAGES.

The undersigned, recorder of mortgages for the parish of Orleans, city of New Orleans, State of Louisiana, certifies that in the records
225 of this office there are no other mortgages standing in the name of Milton Benner, and recorded, against a certain lot of ground situate in the 1st district of this city, in the square bounded by Notre Dame, New Levee, Girod, and Fulton streets, and designated by the No. ten measuring 23′ 8″ 6‴ front on New Levee street, and 23′ 9″ 6‴ front on Fulton sts., by a depth of 121 7 5 on the line which divides it from lot No. 9, and 121 9 1 in depth and front on Notre Dame st.

Than

The draining privilege

Bk. 93, fo. 150, August 29, '71.—The mortgage he, granted in favor of James G. Gernon, per act of M. L. Ainsworth, notary, dated 28 August, 1871, to secure the sum of $5,000 int. and costs.

B. 119, fo. 31 (2 entries), B. 105, fo. 654, No. 50407.—The city taxes for 1873, $ $315.00; writ issued by sup. dis't court, on 2d Ap'l,
226 1874, to pay and satisfy said sum of $315 int. &c., for said taxes.

New Orleans, July fourteenth, 1875.

[SEAL.] (Signed) C. DARCANTEL, *Dy Rec.*

Copy.

NOTE.—The register of conveyances will not be responsible for the record of any acts of sale inscribed in book No. 17 of this office, the same having been lost or stolen previous to his taking possession of the register of conveyances.

STATE OF LOUISIANA,
Parish of Orleans:

OFFICE OF THE REGISTER,
New Orleans, July 14th, 1875.

The undersigned, register of conveyances in and for the parish of Orleans, State of Louisiana, hereby certifies that according to the records of his office it does not appear that Milton Benner has alienated the following property, to wit:

A lot of ground in the 1st district, in square bounded by Notre Dame, New Levee, Girod and Fulton streets, and designated by the No.
227 10, measuring 23″ 9‴ 6‴ on Fulton street by 121″ 7 5 deep on the line of lot 9, and 121″ 9‴ 1‴ deep and front on Notre Dame street.
Acquired on 7 August, 1871.
Title registered in book 100, folio 189.
[SEAL.] (Signed) A. HALPIN, *D. R.*

To have and to hold the said property and appurtenances unto the said purchaser, said assignee, his executors and assigns, forever; and the said vendor the said property and appurtenances herein conveyed to the said purchaser, assignee, his executors and assigns, shall and will warrant and forever defend against all legal claims and demands whatsoever. And the said vendor moreover transfers unto the said purchaser all and singular the rights and actions of warranty to which he is or may be entitled, against any and all of the former owners of the property herein conveyed, hereby subrogating the said purchaser
228 in and to the said rights and actions, to be by him enjoyed and exercised in the same manner as they might have been by said vendor or himself.

This sale and transfer is made and accepted for the following consideration, viz:

After the said Benner's purchase of said property the late Mr. Fisk desired to get it back at the same price that said Milton Benner had given for it, to which the said Milton Benner consented, and received from said Fisk, or for his account, the said amount of purchase price, namely, the sum of five thousand five hundred dollars, with the understanding that the said Benner should not make the title until released from certain bonds signed by him and obligations undertaken by him on account of said Fisk. These obligations being now disposed of satisfactorily to said Benner, he makes this transfer in compliance with said understanding, and makes it to the assignee of said Fisk as the transaction took place before his (said Fisk's) bankruptcy.

229 Thus done and passed in my office at New Orleans aforesaid, the day, month and year first above written, in the presence of and , witnesses of lawful age, domiciliated in this city, who hereunto sign their names with the parties, and me, the said notary, after reading of these presents.

(Signed) M. BENNER.

STATE OF LOUISIANA,
Parish of Orleans:

Be it known that on this the eighth of the month of February, eighteen hundred and seventy-seven, before me, William Joseph Castell, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, personally appeared Milton Benner, who declared and acknowledged the above to be his genuine signature; that he made said signature on the fourteenth of July, 1875, of his own free will and accord, for the uses and purposes contained in the above and foregoing act.

230 Thus done and passed at New Orleans, La., this eighth day of February, eighteen hundred and seventy-seven, in the presence of William B. Lancaster and James J. Woulfe, witnesses of lawful age, who

reside in this city, and hereunto sign their names with said M. Benner and me, notary, after the reading of these presents.

W. B. LANCASTER,
W. J. CASTELL,
Not. Pub.

(Signed)
M. BENNER.
JAMES J. WOULFE.

I certify the above and foregoing to be a true copy of the original act and of the conveyance and mortgage certificates annexed to said original act extant in my current register.

In faith whereof I grant these presents under my signature and the impress of my seal of office.

New Orleans, 14th Feb'y, 1877.

[SEAL.] (Signed) W. J. CASTELL,
Not. Pub.

I, the undersigned, register of conveyances in and for the parish of Orleans, State of Louisiana, do hereby certify that a synopsis of the original act of which this is a copy was duly registered on the
231 9th day of February, 1877, in book 106, folio 984, of this office.

New Orleans, March 7th, 1877.

[SEAL.] (Signed) C. B. FISH, *Reg.*

Registered conveyance, b'k 106, fo. 984.
New Orleans, February 9th, 1877.

[SEAL.] (Signed) C. B. FISH, *Reg.*

Sale from E. W. Foster to Clay Green, marked C.

Offered by defendant.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Be it known that on this ninth day of March, 1876, and of the Independence of the United States of America the one hundredth, before me, William Joseph Castell, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Mr. Everett Worthington Foster, of
232 Bloomington, Illinois, who declared that for the price and sum hereinafter expressed he does, by these presents, grant, bargain, sell, convey, transfer, assign, and set over, with no further warranty than as against his own acts and deeds, unto Clay Green, esq., of the State of California, herein represented by his agent and attorney in fact, Richard Rhodes, esq., of this city of New Orleans, present, accepting and purchasing for said Clay Green, his heirs and assigns, and acknowledging delivery and possession thereof, all and singular the right, title, and interest of him, the said vendor, in and to two certain lots of ground situate, lying, and being in the first district of this city, in square number eighteen, bounded by Fulton, Girod, Peters, and Notre Dame streets, known as lots numbers eight and nine on Fulton st., and measuring forty-seven feet seven inches by one hundred and twenty feet four
233 inches, being the same property which the present vendor acquired by purchase from W. P. Harper, sheriff of the parish of

Orleans, at a sale thereof made by said sheriff by virtue of a writ of fieri facias for State taxes for 1871, to him directed by the honorable the superior district court for the parish of Orleans, at the suit of the State of Louisiana versus F. M. Fisk, No. 4745 of the docket of said court, the whole as per sheriff deed dated 17th January, 1874, duly registered in conveyance office in book 104, fo. 209, and duly recorded in the clerk's office of said superior district court in deed book No. 1, folios 86 to 93, and he does not appear to have alienated said property since he acquired the same, as appears by reference to the annexed certificate from the register of conveyances in and for the city and parish dated this day.

By reference to the annexed certificate from the recorder of mortgages in and for this city and parish, dated this day, there appears
234 to be no other mortgages standing in the name of said vendor and recorded against the property herein conveyed than the draining privilege, the city taxes for 1875, $100; and the State taxes for 1874, $65.25. (2 mortgages.)

To have and to hold the said rights, title, and interest, in and to said property and appurtenances unto the said purchaser, his heirs and assigns forever.

And the said vendor moreover transfers unto the said purchaser all and singular the rights and actions in warranty to which he is or may be entitled, against any and all of the former owners of the property herein conveyed; hereby subrogating the said purchaser in and to the said rights and actions, to be by him enjoyed and exercised in the same manner as they might have been the said vendor himself.

This sale is made and accepted for and in consideration of the price and sum of one hundred and fifty dollars, which amount said purchaser has presently paid in ready current money, and grants full acquit-
235 tance and discharge therefor.

The production of the tax receipts is hereby dispensed with, by consent of parties hereto, the said purchaser hereby assuming to the acquittance of said vendor all taxes that may be due and payable on said property, it being expressly understood that the present vendor gives no guaranty of title, and sells and conveys only what rights he may have by virtue of said tax sale.

Thus done and passed at my office at New Orleans aforesaid, the day, month, and year first above written, in the presence of James J. Woulfe and Harris Murphy, witnesses of lawful age, domiciliated in this city, who hereunto sign the names with the parties, and me, the said notary, after reading of these presents.

(Signed) EVERETT W. FOSTER. [SEAL.]
(Do.) RICHARD RHODES.
JAMES J. WOULFE.
HARRIS MURPHY.

W. J. CASLETT, *Not. Pub.*

A true copy.
New Orleans, April 19, 1876.
(Signed) W. J. CASLETT, *Not. Pub.*

236 *Schedules, suit No. 696, eastern district of New York, marked D, and offered by defendant.*

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, B. Lincoln Benedict, clerk of the district court of the United States of America for the eastern district of New York, do hereby certify that

the writings annexed to this certificate are true copies of their respective originals, on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, this 18th day of May, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States the 101st.

[SEAL.] (Signed) B. LINCOLN BENEDICT, *Clerk.*

Petition by debtor.

To the Hon. Charles L. Benedict, judge of the district court of the United States for the eastern district of New York.

237 The petition of Francis M. Fisk, of the city of Brooklyn, in the county of Kings, and State of and district aforesaid, respectfully represents:

That he has resided for the longest period during the six months next immediately preceding the filing of this petition at the city of Brooklyn, within said judicial district; that he owes debts exceeding the amount of three hundred dollars, and is unable to pay all the same in full; that he is willing to surrender all his estate and effects for the benefit of his creditors, and desires to obtain the benefit of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, and the acts amending the same.

That the schedule hereto annexed, marked A, and verified in your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said act.

That the schedule hereto annexed, marked B, and verified by your petitioner's oath, contains an accurate inventory of all his estate, both real and personal, assignable under the provisions of said act.

238 Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt, within the purview of said act; and that he may be decreed to have a certificate of discharge from all his debts provable under the same.

(Signed) F. M. FISK.

(Signed) GOODRICH & WHEELER,
Attorney for Petitioner.

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Francis M. Fisk, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief; and I do further make oath that I am a citizen of the United States of America, and that I will bear true faith and allegiance to the same.

(Signed) F. M. FISK, *Petitioner.*

Subscribed and sworn to before me this 27th day of December, A. D. 1871.

(Signed) D. C. WINSLOW, *Reg.*

239 (PETITION BY DEBTOR.)

SCHEDULE A.

Statement of all creditors who are to be paid in full, or to whom priority is secured, according to the provisions of the 28th section of said act.

Order of payment; preferred claims.	Reference to ledger or Voucher.	Names of creditors.	Residences and occupations.	Amount.	When and where contracted.	Nature and consideration of the debt and whether contracted as copartner or joint contractor, and if so, with whom.
1. Debts due the United States, and taxes and assessments under the laws thereof.	.....	None.....				
2. Debts due to the State of N. York, and taxes and assessments under the laws of said State.	.....	None.....				
3. Wages due clerk, servant, etc., to an amount not exceeding $50, for labor performed within six months.	.....	None.....				
4. Other debts preferred by said act.	.....	Taxes due the city of New Orleans.	.....	Unknown.		
		Taxes due the State of Louisiana.	.....	Unknown.		

F. M. FISK, *Petitioner.*

240 (PETITION BY DEBTOR.)

SCHEDULE A.

Creditors holding securities.

N. B.—Particulars of securities held, with dates of same, and when given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the 11th section of the act, whether contracted as copartner or joint contractor with any other person, and if so, with whom.

Reference to ledger or voucher.	Names of creditors.	Residence and description.	When and where contracted.	Value of securities.	Amount of debts.
None	Joseph D. Weaver.	New Orleans, Louisiana; two mortgages on real estate in the city of New Orleans, one dated February 5th, 1868 the other dated April 12th, 1866, and given at the date thereof	April 12th, 1866; February 5th, 1868; New Orleans, Louisiana.	11,258 33	11,258 33
None	W. W. Washburn.	New Orleans, Louisiana; three mortgages on real estate in said city of New Orleans, dated, one March 26th, 1866, and two March 21st, 1866, and given at the date thereof.	March 21st, 1866; March 26th, 1866; New Orleans, Louisiana.	5,488 70	5,488 70
None	Milton Benner..	New Orleans, Louisiana; two mortgages on real estate in said city of New Orleans, dated March 13th, 1869, and March 21st, 1866, and given at the date thereof.	March 21st, 1866; March 13th, 1869; New Orleans, Louisiana.	6,800 00	6,800 00
None	Frederick G. Fisk.	New Orleans, Louisiana; mortgage on real estate in said city of New Orleans, dated about 1856, given at the date thereof.	About 1856; New Orleans, Louisiana.	8,000 00	8,000 00

F. M. FISK, *Petitioner.*

241 (PETITION BY DEBTOR.)

SCHEDULE A.

Creditors whose claims are unsecured.

[N. B.—When the name and residence (or either) of any drawer, maker, endorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name, residence, and occupation of the last holder known to the petitioner. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property. The nature of each debt and demand, whether founded on written security, obligation, contract, or otherwise, and also the true cause and consideration of such indebtedness in each case, and the place where such indebtedness occurred.

Reference to ledger or voucher.	Names of creditors.	Residence and occupation.	Amount.	When and where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, &c., and whether contracted as copartner or joint contractor with any other person, and if so, with whom.
	C H. Maddox.....	Atlanta, Georgia..	650 00	1869–1872; Atlanta, Georgia.	Legal services; no judgment, note, or other paper.
	Hoffman & Co	New Orleans, Louisiana.	55 00	1870–1871; New Orleans, La.	Merchandise; no judgment, note, or other paper.
	A. M. Hobbrook & Co., Picayune office	New Orleans, La..	60 00	1871; New Orleans, Louisiana.	Advertising; no judgment, note, or other paper.
	E. P. Gleason	New York City...	55 00	New York City.	Merchandise; no judgment, note, or other paper.
	W. Whulpe.....	New Orleans	Unknown	1871; New Orleans	Costs of court, 6th district N. Orleans; no judgment, note, or other paper.
	Ansel Edwards...	New Orleans	405 00	1862; New Orleans.	Merchandise; judgment 6th dist. court N. Orleans.
	A. G. Farwell & Co., members unknown.	Boston, Mass; merchants.	15,735 50	1867 & 1868; Boston, Mass.	Balance due on settlement of cotton acc't, judgment.
	Alexander Wheeless.	N. Orleans, Louisiana; banker.	960 00	1870; New Orleans	Operation in gold; judgment; appealed.
	Victor Fassman...	New Orleans; cotton press.	1,708 00	NewOrleans; 1866.	Rent; judgment.
	(Unknown)Briggs	New Orleans; banker.	6,000 00	Montgomery, Ala.; 1862.	Assignment of a judgment from E. Lockett.

FRANCIS M. FISK, *Petitioner.*

SCHEDULE A. [3.

Creditors whose claims are unsecured.

[N. B.—When the name and residence (or either) of any drawer, maker, endorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name, residence, and occupation of the last holder known to the petitioner. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property. The nature of each debt and demand, whether founded on written security, obligation, contract, or otherwise, and also the true cause and consideration of such indebtedness in each case, and the place where such indebtedness occurred.]

Reference to ledger or voucher.	Names of creditors.	Residence and occupation.	Amount.	When and where contracted.	Nature and consideration of the debt, and whether any judgment, bond, bill of exchange, promissory note, &c., and whether contracted as copartner or joint contractor with any other person, and if so, with whom.
	Henry Lindop	New Orleans; slater.	115 00	New Orleans, 1870	Slating. No judgment, note, or other paper.
	Roberts & Co., members unknown.	New Orleans	315 00	New Orleans, 1870	Sashes & blinds. Note for the amount; no judg't.
	Mary Thompson..	N. Orleans; servant.	200 00	N. Orleans, 1870 ..	Balance due for wages. No judg't, note, or other paper.
	Mary A. Goff.....	New Orleans; no business.	600 00	New Orleans, 1861	Pickwickan claim. Judgment.
	J. Monroe Mackie	Phila., Penn.....	5,751	N. Orleans, 1871...	Money loaned. No judgment, note, or other paper.
	Higgins & Greene	San Francisco, California; bankers.	6,250 00	San Francisco, 1861	Money & acceptance. No judgment, note, or other paper.
	William B. Morris	Blois City, Idaho; banker.	5,333	New Orleans, 1861	Money. No judgment, note, or other paper.
	George Sutton	Louisville, Kentucky; merchant	3,461 00	Louisville, Kentucky, 1865 to 1871.	Board and education of grandchildren. No judgment, note, or other paper.
	Samuel Williams .	New York City; lawyer.	760 00	N. York City, about 1855.	Legal services. Judgment.
	J. C. Stewart.....	New Orleans	100 00	N. Orleans, 1870 ..	Sand, lime, bricks, &c. No judgm't, note, or other paper.
	Whitaker.....	Atlanta, Georgia..	500 00	Atlanta, Georgia, 1867.	Claim for interest. No judgm't, note, or other paper in suit.
	Queene	Atlanta, Georgia; merchant.	350 00	Atlanta, Ga., 1867.	Claim for interest. No judg't, note, or other paper in suit.
	Leonard Van Buckirk.	New York City; merchant.	3,950 00	New York City. 1871.	Money. No judg't, note, or other paper.
	Doctor Maxwell ..	New York City; physician.	25 00	New York City, 1870.	Medical attendance. No judg't, note, or other paper.

FRANCIS M. FISK, *Petitioner.*

243 (PETITION BY DEBTOR.)

SCHEDULE A.

Liabilities on notes or bills discounted which ought to be paid by the drawers, makers, or acceptors.

N. B.—The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers, or acceptors thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the petitioner should be stated, and his business and place of residence. The same particulars as to the notes or bills on which the petitioner is liable as endorser.

Reference to ledger or voucher.	Names of holders as far as known.	Place of residence and occupation.	Place where contracted.	Amount.	Nature of liability, whether same was contracted as co-partner or joint contractor, or with any other person; and if so, with whom.
	None.				

F. M. FISK. *Petitioner.*

244 J.

(N. B.—The following form of oath to Schedule A of the petition by debtor is prescribed, and is to be annexed to the same:)

Oath to Schedule A.

UNITED STATES OF AMERICA.
Eastern District of New York, ss:

On this 27th day of Dec., A. D. 1871, before me, personally came Francis M. Fisk, the person mentioned in and who subscribed to the foregoing petition and schedule, marked A, respectively, and who being by me first duly sworn, did declare the said schedule to be a statement of all his debts, &c., in accordance with the Revised Statutes of the United States, title "bankruptcy."

(Signed) D. C. WINSLOW,
Register.

245 (PETITION BY DEBTOR.)

SCHEDULE B. [1.

Statement of all real and personal estate and effects whatever which are now in the possession enjoyment, or under the control of the petitioner, or which are held by any other person, in trust for his use or to the possession or enjoyment of which he is entitled at the date of filing petition.

[Interest in lands.]

Particular description of real estate owned by petitioner or held by him, and whether under contract or lease.	Encumbrances thereon, if any, and dates thereof.	Statement of all particulars relating thereto.	Estimated value.
The following property, situated in the city of New Orleans, State of Louisiana:			
House & lot No. 157 Camp st	Mortgage and taxes about $1,600; March 13th and 21st, 1866; February 5th, 1868.		18,000 00
House, store, and lot No. 22 Natchez st	Mort. and taxes about $9,000; April, 1856.		9,000 00
Store and two lots No. 133 and 135 New Levee street.	Mort. and taxes about $5,000; February 5th, 1868.		8,000 00
Warehouse and two lots 145 and 147 New Levee street.	Mort. and taxes about $3,000; about March, 1866.		4,000 00
School-house and four lots corner of Josephine and Fulton streets.	Mort. and taxes about $7,000; March, 1866.		8,000 00
Two lots on Jackson between Rousseau and Fulton streets.	Mort. and taxes $2,000; March 21, 1866.		2,500 00
Lot corner Rocheblave and Poydras streets.	Mort. and taxes about $300; March, 1866.		400 00

F. M. FISK, *Petitioner.*

246 (PETITION BY DEBTOR.)

SCHEDULE B.

Personal property.

	Dollars.	Cents.
a. Cash on hand	None.	
b. Bills of exchange, promissory notes, or securities of any description (each to be set out separately)	None.	
c. Stock in trade, in my business of at of the value of	None.	
d. Household goods and furniture, household stores, wearing apparel, and ornaments of the person	None except such as are exempted.	
e. Books, prints, and pictures	None.	
f. Horses, cows, sheep, and other animals	None.	
g. Carriages and other vehicles	None.	
h. Farming stock and implements of husbandry	None.	
i. Shipping and shares in vessels	None.	
k. Machinery, fixtures, and apparatus used in business, with the place where each is situated	None.	
l. Goods or personal property of any description, with the place where each is situated, five cotton gins and sundry articles, seized by the sheriff of the parish of Orleans, State of Louisiana, under an execution favor of A. G. Farwell & Co., about $750	About 750.	

F. M. FISK, *Petitioner.*

247 (PETITION BY DEBTOR.)

SCHEDULE B.

Choses in action.

A.—Debts due petitioner on open account:

P. P. Pease, Atlanta, Georgia	$1,500 00
Doct. Massey, " "	900 00
F. G. Fisk, New Orleans, La	5,000 00
First National Bank, New Orleans, La	262 00
Jacob Barker, " " "	325 00
John Walsh, " " "	325 00
Tandy & Co., Shreveport, "	900 00
R. A. Phelps & Co., " "	650 00
Doctor G. W. Chapman, Monroe, "	1,500 00
Caleb Price, Mobile, Ala	1,500 00
J. H. Barrett, Atlanta, Ga	100 00
Thomas H. Barker, New Orleans, La	1,000 00
H. A. Crawford, Atlanta, Ga.,	300 00
N. C. Gullett, New Orleans, "	8,500 00
A. P. Dermitt, " " "	65 00
Jacob Denny	5,000 00
A. H. Walker	1,500 00
J. M. Cullen	250 00
Hosack & Co	500 00
S. L. Langdon	600 00
Edward Heath	2,000 00
Thomas Barker	1,000 00

D.—Unliquidated claims of every nature, with their estimated value:

Edward Wright and others	46,000 00
Shephard & McGinniss	79,000 00
J. L. Sterry	30,000 00
J. M. Moss	2,300 00
Underwood and others	2,000 00
N. C. Wood	350 00
Benjamin F. Butler	250,000 00
Davidson, Hill and Lindop	1,500 00
C. S. Sauvinet	1,500 00
Joseph D. Weaver	2,000 00
A. P. Moulton	11,000 00

FRANCIS M. FISK,
Petitioner.

248 PETITION BY DEBTOR.

SCHEDULE B.

Property in reversion, remainder, or expectancy, including property held in trust for the petitioner, or subject to any power or right to dispose of, or to charge.

[N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same as far as known to the petitioner.

General interest.	Particular description.	Supposed value of my interest.
		Dollars. *Cents.*
Interest in land	None	
Personal property	None	
Property in money, stock, shares, bonds, annuities, etc.	None	
		Amount realized from proceeds of property conveyed.
		Dollars. *Cents.*
Rights and powers	None	
Property heretofore conveyed for benefit of creditor	None	
What portion of debtor's property has been conveyed by deeds of assignment, or otherwise, for benefit of creditors, date of such deed, name and address of party to whom conveyed; amount realized therefrom and disposal of same, so far as known to petitioner	None	

F. M. FISK, *Petitioner.*

249 (PETITION BY DEBTOR.)

SCHEDULE B.

A particular statement of the property claimed as excepted from the operation of said act, by the provisions of the 14th section thereof, giving each item of property and its valuation; and, if any portion of it is real estate, its location, description, and present use.

[N. B.—The property claimed to be exempt under the laws of any State is to be described separately from the rest, and reference given to the statute of the State creating the exception.

		Valuation.	
		Dollars.	Cents.
Property claimed to be excepted from the operations of said act, and which may be set apart by the assignee under the 14th section	Wearing apparel, consisting of sundry coats, pants, vests, &c		
Property claimed to be exempt by State laws: its valuation; whether real or personal estate: its description and present use; and under what State law exemption is claimed	Wearing apparel		

F. M. FISK, *Petitioner.*

250 (PETITION BY DEBTOR.)

SCHEDULE B.

The following is a true list of all books, papers, deeds, and writings re-

lating to my trade, business, dealings, estate, and effects, or any part thereof, which, at the date of this petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me or for my use, benefit, or advantage; and also of all others which have been heretofore at any time in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason of their custody of the same:

Books.—Ledgers, day-books, &c.

Deeds.—Deeds of property specified in Schedule B, No. 1.

Papers, etc.—Letters, bills, &c.

N. B.—The following form of oath to Schedule B of the petition by debtor is prescribed and is to be annexed to the same:

Oath to Schedule B.

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

On this 27th day of December, A. D. 1871, before me personally came Francis M. Fisk, the person mentioned in and who subscribed to the foregoing petition and schedule, marked B respectively, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the Revised Statutes of the United States, title "bankruptcy."

F. M. FISK,
Petitioner.

D. C. WINSLOW,
Register in Bankruptcy.

251 *Petition, account, and judgment in the suit of Wheeless and Pratt vs. F. M. Fisk, in the fourth district court.*

Offered by defendant to show the origin and amount of debt recovered against F. M. Fisk.

STATE OF LOUISIANA:

Fourth district court for the parish of Orleans.

WHEELESS AND PRATT
vs.
F. M. FISK. } No. 24130.

Petition.—Filed May 31st, 1870.

To the Hon. Paul E. Theard, judge of the fourth district court for the parish of Orleans:

The petition of Wheeless and Pratt, a commercial firm domiciled and doing business in the city of New Orleans, composed of Alexander Wheeless and Daniel Pratt, with respect shews:

That F. M. Fisk, a resident of this city of New Orleans, is justly indebted unto petitioner in the full sum of nine hundred and seven-
252 ty-seven $\frac{42}{100}$ dollars, together with interest thereon at the rate of eight per cent. per annum, from March 26th, 1870, being balance due petitioners for cash advances, interest, and commissions upon certain purchases and sales of gold made by them by order for account of

said F. M. Fisk, as fully stated in the account marked A, hereto annexed and made part of this petition.

Petitioners aver amicable demand and refusal to pay.

Wherefore they pray that said F. M. Fisk be cited to appear and answer hereto, and that he be condemned to petitioners the aforesaid sum of nine hundred and seventy-seven $\frac{46}{100}$ dollars, and 8 % interest from March 26th, 1870, and costs of suit and for general relief.

(Signed) BREAUX & FENNER, *Att'ys.*

Account marked A, annexed to and forming part of petition.

F. M. Fisk, esq., in acc't with Wheeless and Pratt.

1869.				
Dec.	10.	To cash telegram		$5 00
253 1869.				
Dec.	15.	To cash telegram		5
	29.	" " "		3 69
1870.				
Jan.	10.	" 10 M gold, N. Y., @ 123½	12,312 50	
		" comm'n ¼ %	25	
				12,337 50
		" 5 M gold, N. Y., 122	6,100	
		" comm'n ¼ %	12 50	
				6,112 50
		" 5 M gold, N. Y., 121½	6,093 75	
		" comm'n ¼ %	12 50	
				6,106 25
March	9.	" cash sundry telegrams		17 20
		" int. 89 d's 8 % on 12,312.50		238 15
		" int. 83 d's 8 % " 6,106		112 51
		" int. 83 d's 8 % " 6,093.75		112 39
				$25,050 19

CONTRA.

1869.				
Dec.	10.	By cash		500
	15.	" "		500
	30.	" "		500
Mar.	14.	" 20 M gold, N. Y., @ 113½	22,625	
		less com., 50		
		tax 2.27	52 27	
				22,572 73
		Balance due		977 46
				$25,050 19
		To balance down		$977 46

E. & O. E.

New Orleans, March 26th, 1870.

254 *Judgment on the petition.*

Fourth district court for the parish of Orleans.

WHEELESS AND PRATT
vs.
F. M. FISK. } No. 24130.

For the reasons assigned in the opinion this day delivered and on file, it is ordered, adjudged, and decreed that plaintiffs recover of defendant, F. M. Fisk, nine hundred and seventy $\frac{46}{100}$ dollars, with 8 % interest from March 26th, 1870, till paid, and costs, and that defendant's reconventional demand be dismissed with costs.

Rendered January 17th, 1871.

Signed Jan'y 21, 1871.

(Signed) PAUL E. THEARD, *Judge.*

255 *Petition, account, and judgment in the case of Fassmann versus F. M. Fiske.*

Offered by .

To the honorable the judge of the fourth district court for the parish of Orleans:

The petition of Edward Victor Fassman, who resides in the city of New Orleans, respectfully shews:

That on the 1st day of February, 1867, petitioner had leased unto John Conolly and E. M. Hickock, commercial partners, for four years, a certain portion of ground, having and measuring one hundred and fifty-seven feet front on Clio street by one hundred and forty-five feet front on Howard street.

That on the 7th day of February, 1868, said Conolly and Hickock being in arrears of rent, petitioner sued them, and caused a certain mill which had been placed on the premises to be provisionally seized in suit No. 20294 of the docket of this honorable court, entitled

256 C. V. Fassman vs. John Conolly and Hickock.

That a few days after said Conolly went into bankruptcy and surrendered the mill, whereupon petitioner was about to take proceedings in the district court of the United States to cause said mill to be seized, but was induced by F. M. Fisk to suspend this action, because said Fisk was the owner of the mill, and had acquired it from Conolly, and was occupying the leased premises with said mill, and was liable to said Conolly as under-tenant, and was willing and liable to pay the rent due by Conolly to petitioner.

That said Fisk had brought his action in the said United States district court to prevent the assignee (who had put a keeper on the premises) from disposing of said mill.

That petitioner insisted on asserting his privilege on said mill, not only for the rent then due, 1st of April, 1868, but for the unex-

257 pired term of the lease to Conolly; and petitioner made the following agreement with said Fisk:

Fisk agreed to take a lease from Mr. Fassman till expiration of present lease of Conolly, paying for four months at $50.00 per month and costs of State court, balance of current year at $400.00 per annum, and remaining two years at forty per month. This agreement to take

effect only in case U. S. court decides in favor of Fisk's title to the mill.

(Signed) F. M. Fisk,
(") E. V. FASSMANN.

That, however, the said Fisk did not await any formal decision of the bankrupt court, but a few days afterwards, the assignee having removed his keeper, or otherwise tacitly abandoned his claim, the said Fisk immediately re-entered said premises, took possesion of said mill, has since then treated the same as his own, and has ever since occupied said premises with his servants and under-tenants.

That said Fisk since the making of the agreement above stated
258 has expressly and tacitly waived the condition thereof, and is at all events, under the facts above stated, liable to petition' even independently of said agreement.

That the rent now due petitioner, as shown by account annexed, is nine hundred and seventy-three $\frac{33}{100}$ dollars, and the rent to become due will amount to five hundred and twenty dollars and costs of State court, for which Fisk is liable, are two hundred and fourteen $\frac{75}{100}$ dollars.

Wherefore petitioner prays that said Francis M. Fisk be duly cited to answer hereto, and after due proceedings he be condemned to pay unto petitioner the sum of seventeen hundred and eight $\frac{08}{100}$ dollars, with legal interest from judicial demand and costs of suit and for general relief.

(Signed) E. HOWARD McCALEB,
Att'y for Pet'r.

Account annexed to above petition.

F. M. Fisk, dr. to E. V. Fassmann.

259	1868, April 1st. For four months' rent of property corner of Clio & Howard streets, $50 per month.....	$200 00
1869.		
Feby. 1,	10 months do. to date.....	333 33
1870.		
Jany. 1,	11 " " " " $40.00	440 00
Amount rent due.....		$973 33
Costs of court, sheriff		198 50
" " " clerk.....		16 25
Total due Jany. 1, 1870.....		1,188 08
1870.		
1st Jany. to 1st Feby., 1871, @ $40.00 per month, thirteen monhts.....		$520 00
Total due and to become due.....		1,708 08

Judgment annexed to the foregoing petition.

23633.

This cause came up for trial before a jury from yesterday.

E. Howard McCaleb, for plaintiff; M. M. Cohen, J B. Lancaster, for defendant.

The jury having answed to their names, viz:

A. Cousin, foreman.	Reuben Bush,
Doctor Green,	Harris Anderson,
Joseph Swain,	J. Braxton,
Edward Kelly,	David Glass,
G. Westerhouse,	Jacques Chapelin,
Edward Johnson,	W. Montgomery,

The trial proceeded.

260 After hearing pleadings, evidence, and counsel, the court charged the jury and they retired to their room.

After due deliberation the jury returned to the court room with the following verdict:

NEW ORLEANS, *June 1st*, 1871.

We, the jury in the case of E. V. Fassman vs. F. M. Fisk, give our verdict in favor of the plaintiff, defendant to pay the full amount claimed against him—$1,708.08.

A. COUSIN, *Foreman.*

Being satisfied with the verdict the court ordered the same to be recorded, and accordingly it is ordered. adjudged, and decreed that plaintiff recover of defendant, F. M. Fisk, one thousand seven hundred and eight $\frac{08}{100}$ dollars, with legal interest from judicial demand (21st January, 1870), and costs.

Rendered June 1st, 1871.

Signed June 12th, 1871.

(Signed) PAUL E. THEARD, *Judge.*

261 *Certified copy of judgment.*

Offered by defendants.

STATE OF LOUISIANA:

Sixth district court for the parish of Orleans.

FRIDAY, *the 5th day of Febr'y*, 1864.

Present, the honorable R. K. Howell, judge.

ANSELL EDWARDS *vs.* F. M. FISK. } No. 10445.

This case came on to-day for trial.

Durant and Hornor for plaintiff; John Culbertson, curator ad hoc, for deft.

After hearing pleadings and evidence the court, considering plaintiff's claim fully established, it is adjudged and decreed that the plaintiff, Ansel Edwards, do have and recover of defendant, F. M. Fisk, for the sum of four hundred and three $\frac{82}{100}$ dollars, with legal interest from the first of June, 1862, until paid, and costs of suit and privilege upon the property attached.

Extract from the minutes.

(Signed) H. MIESTER,
Deputy Clerk.

262 *Certificate of clerk of fifth district court, showing that record in suit of Farwell & Co. vs. F. M. Fisk, No. 1696, 5th district court, is lost and can't be found after due search.*

Certificate marked F, offered by defendants.

I, Thomas Duffy, clerk of the fifth district court for the parish of Orleans, do hereby certify that, after due and diligent search I, clerk, was unable to find the record in the case of Farwell and Company vs. F. M. Fisk, No. 1696, of the docket of this hon. court.

In testimony whereof I have hereto set my hand and affixed the seal of this hon. court.

New Orleans, June 7th, 1877.

[SEAL.] (Signed) THOMAS DUFFY,
Clerk 5th Dist. Court.

263 *Document G, certified copy of bankrupt record.*

Offered by plaintiff.

United States district court, eastern district of New York.

In the matter of Francis M. Fisk, bankrupt. No. 696.

FINAL RECORD.

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, B. Lincoln Benedict, clerk of the district court of the United States of America for the eastern district of New York, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, this twenty-seventh day of November, in the year of our
264 Lord one thousand eight hundred and seventy-five, and of the Independence of the said United States the one hundredth.

[SEAL.] (Signed) B. LINCOLN BENEDICT, *Clerk.*

No. 696.

In the district court of the United States for the eastern district of New York.

In the matter of Francis M. Fisk. In bankruptcy. A petitioner for adjudication in bankruptcy of himself.

Whereas Francis M. Fisk, of the city of Brooklyn, county of Kings, State of New York, and district aforesaid, has on this 27th day of December, A. D. 1871, at 12 o'clock 10 minutes p. m., filed in the office of the clerk of said court a petition for adjudication in bankruptcy against himself according to the provisions of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the
265 United States," approved March 2d, 1867, and acts amendatory thereof, it is thereupon ordered that said petition be referred to David C. Winslow, one of the registers in bankruptcy of this court, to

make adjudication thereon and take such other proceedings therein as are required by said act.

And further that said petitioner shall on or before the 27th day of December, 1871, file with said register a duplicate copy of said petition and schedules thereto annexed and that he attend before said register on said day at 1 o'clock p. m., and thenceforth as said register may direct, to submit to such orders as may be made by said register or by this court relating to his bankruptcy.

And further that, until otherwise ordered by the court, the register shall act upon the matters arising in this case at his office, at No. 189 Montague street, in the city of Brooklyn, county of Kings, N. Y., at such times as he shall fix for that purpose.

CHARLES L. BENEDICT,
District Judge.

266 I, Samuel T. Jones, clerk of the district court of the United States for the eastern district of New York, do hereby certify that the above is a true copy of an order made in the above-entitled matter.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of Brooklyn, in the eastern district of New York, this 27th day of December, in the year of our Lord one thousand eight hundred and seventy one, and of the Independence of the said United States the ninety-sixth.

(Signed) SAMUEL T. JONES, *Clerk.*

District court of the United States, eastern district of New York.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

EASTERN DISTRICT OF NEW YORK, *ss:*

267 Francis M. Fisk, being duly sworn, says that on the 27th day of December, 1871, he filed in the office of the clerk of said court his petition in bankruptcy with the proper schedules thereto annexed; that he was on said day duly declared a bankrupt; that Joseph D. Weaver, one of his creditors, whose name appears in said schedule of creditors and whose debt is provable in bankruptcy, that the said Weaver is endeavoring of his claim; that he has obtained judgment of his claim, that he has obtained judgment against the said bankrupt, on which an execution has been issued and a levy made the sheriff of the parish of Orleans, in the State of Louisiana, and that the said sheriff is about to sell the real estate of said bankrupt so levied upon.

(Signed) F. M. FISK.

Sworn to before me this 27th day of December, 1871.

(Signed) D. C. WINSLOW, *Reg.*

268 *Order for stay of proceedings.*

At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court rooms, in the city of Brooklyn, on the 27th day of December, in the year of our Lord one thousand eight hundred and seventy-one—

Present, the honorable Charles L. Benedict, district judge.

In the matter of Francis M. Fisk, bankrupt.

It appearing by the affidavit of Francis M. Fisk, this day presented and filed, that Joseph D. Weaver, a creditor named in the schedule of creditors annexed to the original petition of said bankrupt, on file in this court, whose debt is provable in bankruptcy, is endeavoring by egal proceedings to enforce payment of his said claim :

Now, upon the application of Goodrich and Wheeler, attorney'
269 for the above named bankrupt, it is ordered that all proceedings on the part of the said Joseph D. Weaver or their agents or attorneys to enforce payment of the said claim be and the same are hereby stayed until the question of the discharge of said bankrupt under the provisions of the statutes of the United States relating thereto shall have been determined by this court.

Witness honorable Charles L. Benedict, judge of the said court, and the seal thereof, at the United States court rooms, in the city of Brooklyn, and district aforesaid, this 27th day of December, one thousand eight hundred and seventy-one.

(Signed) SAMUEL T. JONES, *Clerk.*

Adjudication of bankruptcy on debtor's petition.

In the district court of the United States for the eastern district of New York.

In bankruptcy. In the matter of Francis M. Fisk, by whom a pe-
270 tition for adjudication of bankruptcy was filed on the 27th day of December, A. D. 1871, at 189 Montegut street, Brooklyn, N. Y., in said district, on the 27th day of December, A. D. 1871, before D. C. Winslow, register in bankruptcy.

Upon good proof before me taken I find that the said Francis M. Fisk has become bankrupt within the true intent and meaning of the act of Congress entited "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, and I do hereby declare and adjudge him a bankrupt.

D. C. WINSLOW,
Register in Bankruptcy.

Memorandum from docket.

In the district court of the United States for the eastern district of New York.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

271 At the United States court-house, corner of Montague and Clinton streets, in the city of Brooklyn, county of Kings, in said district, on the 27 day of December, A. D. 1871, before Mr. David C. Winslow, register in bankruptcy.

EASTERN DISTRICT OF NEW YORK, *ss :*

MEMORANDUM.—Petition filed by him adjudged him bankrupt.

I hereby certify the above is a true copy of the memorandum in the docket kept by me of my proceedings in the above matter.

D. C. WINSLOW,
Register in Bankruptcy.

272, 273, 274 [Form No. 6.]

Warrant to messenger.

(Voluntary bankruptcy.)

In the district court of the United States for the eastern district of New York.

In bankruptcy. In the matter of Francis M. Fisk, by whom a petition for adjudication in bankruptcy was filed on the 27 day of December, A. D. 1871, in said court.

EASTERN DISTRICT OF NEW YORK, *ss:*

To the marshal of the district of Louisiana, greeting:

Whereas a petition for adjudication of bankruptcy and for relief under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, was on the 27 day of December, 1871, filed by Francis M. Fisk, of Brooklyn, in the county of Kings, in said district, upon which he has been found and adjudged a bankrupt, there being no opposing party thereto, you are therefore hereby directed, as messenger, to be published 3 times in the Brooklyn Daily Union & Daily Eagle, the newspapers published in city of Brooklyn (the first publication to be made forthwith), the following notice, to wit:

This is to give notice, that on the 27th day of December, A. D. 1871, a warrant in bankruptcy was issued against the estate of Francis M. Fisk, of Brooklyn, in the county of Kings, in said district, was adjudged a bankrupt on his own petition; that the payment of any debts and delivery of any property belonging to such bankrupt, to him, or for his use, and the transfer of any property by him are forbidden by law; that a meeting of the creditors of said bankrupt, to prove their debts, and to choose one or more assignees of his estate, will be held at a court of bankruptcy to be holden at No. 189 Montague street, in the city of Brooklyn, before David C. Winslow, register, on the 5th day of February, A. D. 1872, at 10 o'clock a. m.

(Signed) SAMUEL R. HARLOW,
U. S. Marshal for said District.

And you are further directed to serve written or printed notice forthwith, either by mail or personally, on all creditors upon the schedule filed with the said bankrupt's petition [or where names may be given you in addition thereto by the debtor], at least ten days before the appointed meeting of said court, in the following form, to wit:

To Mr. , of , parish of and State of Louisiana, creditor of Francis M. Fisk, bankrupt: You are hereby notified that a warrant in bankruptcy has been issued out of the district court of the United States for the eastern district of New York, against the estate of Francis M. Fisk, adjudged a bankrupt, upon his own petition; that the payment of any debts and the delivery of any property belonging to said bankrupt, to him, or for his use, and the transfer of any property by him are forbidden by law; that a meeting of the creditors of said bankrupt, to wit:

Leonard Van Buskirk	$3,950	New York City.	
Dr. Maxwell	" 25	do.	
City of New Orleans		Unknown.	
State of Louisiana		do.	
Joseph D. Weaver	N. O., La	11,258	33
W. W. Washburn	do.	5,488	70

Milton Benner	N. O., La	6,800	
Fred. G. Fisk	do.	8,000	
A. G. Farwell & Co	Boston, Mass	15,735	59
Alexander Wheeler	N. O., La	960	
Victor Fasman	do.	1,708	
Unknown Briggs	do.	6,000	
Henry Lindrop	do.	115	
Roberts & Co	do.	315	
Mary Thompson	do.	200	
Mary A. Goff	do.	600	
J. Monroe Mackie	Phil., Penn	5,751	
Higgins & Greene	San Fran., Cal	6,250	
William B. Morris	Blois City, Idaho	5,333	
George Sutton	Louisville, Ky	3,461	
Samuel Williams	New York City	760	
J. C. Stuart	N. O., La	100	
Whitaker	Atlanta, Ga	500	
Queen	do.	350	

To prove their debts and choose one or more assignees of his estate, will be held at a court of bankruptcy, to be holden on the 5th day of February, A. D. 1872, at 10 o'clock a. m., at 189 Montague street, in the city of Brooklyn, before Mr. David C. Winslow, register. Samuel R. Harlow, U. S. marshal.

And have you then there this warrant with your doings thereon.

Witness the honorable Chas. L. Benedict, judge of the said court, and the seal thereof, at Brooklyn, in said district, on the 17 day of January, A. D. 1872.

[L. S. OF THE COURT.] SAMUEL T. JONES,
Clerk of District Court for said District.

Countersigned:
D. C. WINSLOW,
Register of said District.

Return of messenger to accompany warrant.

EASTERN DISTRICT OF NEW YORK, *ss:*

By virtue of the within warrant, I have caused the notice therein ordered to be published by an advertisement 3 times in the newspapers within mentioned, the first publication of which was on the 17 day of January, A. D. 1872, in the Brooklyn Union; and I also, on the 17 day of January, A. D. 1872, sent by mail or served personally upon the creditors and others named in said warrant a copy of the notice required thereby to be sent to or served on them, and all of the said notices were according to the directions set out in this warrant.

Fees and expenses.

1. For service of warrant	$2	00
2. For necessary travel miles, at 5 cents per mile each way		
3. For each written note to creditor named in schedule, 10 cents.	2	40
4. For actual and necessary expenses in publication of notices	7	00
	1	00
		25
	12	65

S. R. HARLOW,
U. S. Marshal, as Messenger for said District.

275 *Memorandum from docket.*

In the district court of the United States for the eastern district of New York.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

At the United States court-house, corner of Montague and Clinton streets, in the city of Brooklyn, county of Kings, in said district, on the 17th day of January, A. D. 1872, before Mr. David C. Winslow, register in bankruptcy.

EASTERN DISTRICT OF NEW YORK, *ss:*

MEMORANDUM.—Issued warrant to marshal to advertise twice in Brooklyn Daily Eagle and Brooklyn Daily Union notice of first meeting of creditors before me at 189 Montague street, Brooklyn, Feb'ry 4th, 1872, @ 2 p. m.

I hereby certify that the above is a true copy of the memorandum in the docket kept by me of my proceedings in the above matter.

D. C. WINSLOW,
Register in Bankruptcy.

276 *Memorandum from docket.*

In the district court of the United States, for the eastern district of New York.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

At the United States court-house, corner of Montegut and Clinton streets, in the of Brooklyn, county of Kings, in said district, on the 4th day of Feb'ry, A. D. 1872, before Mr. David C. Winslow, register in bankruptcy.

EASTERN DISTRICT OF NEW YORK, *ss:*

MEMORANDUM.—Meeting of creditors adjourned to Febr'y 5, 1872, @ 2 p. m.

I hereby certify that the above is a true copy of the memorandum in the docket kept by me of my proceedings in the above matter.

D. C. WINSLOW,
Register in Bankruptcy.

277 *Memorandum from docket.*

In the district court of the United States, for the eastern district of New York.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

At the United States court-house, corner of Montague and Clinton streets, in the city of Brooklyn, county of Kings, in said district, on the 5th day of Feb'ry, A. D. 1872, before Mr. David C. Winslow, register in bankruptcy.

EASTERN DISTRICT OF NEW YORK, *ss:*

MEMORANDUM.—Marshal returned warrant duly served; meeting of creditors held and Charles W. Godard, of Brooklyn, N. Y., elected assignee.

Election approved.

I hereby certify that the above is a true copy of the memorandum in the docket kept by me of my proceedings in the above matter.

D. C. WINSLOW,
Register in Bankruptcy.

278, 279 [Form No. 15.]

Choice of assignees.

(First meeting of creditors.)

In the district court of the United States, for the eastern district of New York.

In the matter of , bankrupt. In bankruptcy.

At 189 Montague st., Brooklyn, in said district, on the 5th day of February, A. D. 1872, before Mr. David C. Winslow, register in bankruptcy.

EASTERN DISTRICT OF NEW YORK, *ss:*

MEMORANDUM.—This being the day appointed by the court for the first meeting of creditors in the above bankruptcy, and of which due notice has been given in the Brooklyn Eagle & Brooklyn Daily Union, papers published in city of Brookly', N. Y., and by special notice served personally or through the mail, we whose names are hereunder written, being the greater part in number and in value of the creditors of the said Francis M. Fisk, bankrupt aforesaid, present at this meeting, and who have proved our debts, have chosen and do hereby nominate and choose Charles W. Godard, of the city of Brooklyn, to be the assignee of the said bankrupt's estate and effects, and we do desire that he mny be appointed such assignee accordingly.

Names of creditors above mentioned.	Residences of the same.	Amount of debt. Dollars. Cents.
George Sutton, by Thos. M. Wheeler, att'y.	Louisville, Ky	3,461 00
L. Van Buskirk	New York City	3,950 00

The above constitute a majority in number and amount of the creditors who have proved their claims herein.

D. C. WINSLOW, *Reg.*

Approved on security being given in due form within ten days from this date, the same to be taken before Register Winslow, in the amount to be fixed by him. In case of failure to give security as aforesaid, the register will appoint an assignee.

Febr'y 5, 1872.

CHAS. L. BENEDICT.

280, 281 [Form No. 26.]

Letter of attorney to represent creditor.

In the district court of the United States for the district of

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

To Thomas M. Wheeler.

SIR: I, George Sutton, of the city of Louisville, in the county of Jefferson, State of Missouri, do hereby authorize to attend the meeting or meetings of creditors of the bankrupt aforesaid, advertised or directed to be held at a court of bankruptcy at Brooklyn, New York, on the 5th day of February, A. D. 1872, the day notified in the warrant issued to the messenger by said court in said matter, or at such other place and time as may be appointed by the court for holding such meeting or meetings, or at such meeting or meetings, or any adjournment or adjournments thereof, may be held, and then and there, from time to time, and as often as there may be occasion, for and in name to vote for or against any proposal or resolution that may be then submitted under the 12th, 13th, 14th, 18th, 19th, 21st, 22d, 23d, 27th, 28th, 33d, 36th, 37th, 42d, and 43d sections of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, and vote for or against any proposal or resolution that may be then submitted under the 17th section of an act entitled "An act to amend and supplement an act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, and for other purposes, approved June 22d, 1874; and in the choice of assignee or assignees of the estate of said bankrupt, and for me to accept such appointment of assignee, and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be held therein for any of the purposeses aforesaid, or the declaration of dividend, or for any other purposes in my interest whatsoever.

In witness whereof, I have hereunto signed my name and affixed my seal this 29th day of January, A. D. 1872.

GEORGE SUTTON. [L. S.]

Signed, sealed, and delivered in the presence of—
WM. R. GRAY.
JOS. CLEMENT.

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

Be it known, on the 29 day of January, in the year eighteen hundred and seventy-two, before me, Joseph Clement, a notary public within and for said county, duly authorized to take acknowledgments of deeds, and affidavits, &c., personally came George Sutton, to me well known, and known to me to be the individual described in, and who acknowledged, the within letter of attorney to be his act and deed.

In testimony whereof I have hereunto subscribed my name the day and year last above written, and affixed thereto my official seal.

JOS. CLEMENTS,
Notary Public.

282 *Deposition for proof of debt without security.*

In the district court of the United States for the eastern district of New York.

In the matter of F. M. Fisk, bankrupt. In bankruptcy.

DISTRICT OF KENTUCKY, *ss:*

At Louisville, in the county of Jefferson, and State of Kentucky, on the 1st day of February, 1872, before me, George Sutton, of Louisville, in the county of Jefferson, and State of Kentucky, and made oath and says that the said F. M. Fisk, the person against whom a petition for adjudication of bankruptcy has been filed, at and before the filing of the said petition was and still is justly and truly indebted to this deponent in the sum of $3,461.00, being amount due for boarding, due for clothing, schooling, doctor's a/c paid, music, and books furnished Georgia E. Fisk from November 12, 1859, to Sept'r 11th, 1871, and Master Wm. F. Fisk from March 15, 1861, to Sept'r 21, 1871, as shown by accounts filed herewith marked Exhibit A, for which said sum of $3,461 *dollars*,
283 or any part thereof, this deponent says that he has not, nor has any person by his order, or to this deponent's knowledge or belief, for his use, had or received any manner of satisfaction or security whatever.

And this deponent further says, that the said claim was not procured for the purpose of influencing the proceedings under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; that no bargain or agreement, express or implied, has been made or entered into by or on behalf of this deponent to sell, transfer, or dispose of said claim, or any part thereof, against said bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of this deponent for assignee, or any action on the part of this deponent, or any other person in the proceedings under said act, has been, is, or shall be in any way affected, influenced, or controlled.

284 GEORGE SUTTON,
Deposing Creditor.

Subscribed and sworn to before me, and same is satisfactory to me.
J. H. WARD,
Register in Bankruptcy.

Exhibit A (attached).

LOUISVILLE, KY., *Jan'y* 30, 1872.

Mr. F. M. Fisk in a/c with George Sutton.

To balance due on a/c $3,461 00

Being for boarding, clothing, schooling, doctors' a/c paid, music and books furnished Georgia E. Fisk from Nov. 12, 1859, to Sept'r 11, 1871, and Master William F. Fisk from March 13th, 1861, to Sept. 21, 1871.

285 [Form No. 22.]

Deposition for proof of debt without security.

In the district court of the United States for the eastern district of New York.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

EASTERN DISTRICT OF NEW YORK, *ss:*

At 189 Montague st., in the city of Brooklyn, county of Kings, and State of New York, on the 5th day of February, A. D. 1872, before me, David C. Winslow, register in bankruptcy in said district, came Laurence Van Buskirk, of said city of Brooklyn, and made oath and says that the said Francis M. Fisk, the person by whom a petition for adjudication of bankruptcy has been filed, at and before the filing of the said petition was and still is justly and truly indebted to this deponent in the sum of three thousand nine hundred & fifty dollars and cents. That the consideration of said debt was goods, wares, and merchandise had and received by said bankrupt *That said* of the said Laurence Van Buskirk, for which said indebtedness the said Fisk gave to the said Van Buskirk the promis'ory note hereunto annexed; that no part thereof has been paid; for which said sum of $3,950 *dollars* and cents, or any part thereof, this deponent says that he has not, nor has any person by his order or to this deponent's knowledge or belief, for his use, had or received any manner of satisfaction or security whatsoever.

And this deponent further says that the said claim was not procured for the purpose of influencing the proceedings under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; that no bargain or agreement, express or implied, has been made or entered into by or on behalf of this deponent, to sell, transfer, or dispose of said claim, or any part thereof, against said bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vo'e of this deponent for assignee, or any action on the part of this deponent, or any other person in the proceedings under said act, has been, is or shall be in any way affected, influenced or controlled.

L. VAN BUSKIRK,
Deposing Creditor.

Subscribed and sworn to before me, Feb'y 5, 1872, and I certify that the proof is satisfactory to me and that the fees paid for proving this claim are $2.00.

D. C. WINSLOW,
Register in Bankruptcy.

286 *Copy of note.*

NEW YORK, *October* 15, 1870.

Six months after date, I promise to pay to order of L. Van Buskirk three thousand nine hundred and fifty dollars, value received.

F. M. FISK.

[$2.00 int. rev. stamp, cancelled.]

287 [Form No. 22.]

Deposition for proof of debt without security.

In the district court of the United States for the eastern district New York.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

EASTERN DISTRICT OF NEW YORK, *ss:*

At 189 Montague street, in the city of Brooklyn, county of Kings and State of New York, on the 13th day of May, A. D. 1872, before me, David C. Winslow, register in bankruptcy in said district, came E. P. Gleason, of said city of Brooklyn, and made oath and says that the said Francis M. Fisk, the person by whom a petition for adjudication of bankruptcy has been filed, at and before the filing of the said petition was and still is justly and truly indebted to this deponent, doing business in the city of New York, at 135 Mercer st., in the sum of sixty dollars and 25 cents. That the consideration of said debt is goods, wares, and merchandise, had and received by the said bankrupt of deponent as per account annexed.

That no note or judgment has been obtained by deponent for any portion of this claim; that no payments have been made thereon; for which said sum of sixty dollars and 25 cents, or any part thereof, this deponent says that he has not, nor has any person by his order or to this deponent's knowledge or belief, for his use, had or received any manner of satisfaction or security whatsoever.

And this deponent further says that the said claim was not procured for the purpose of influencing the proceedings under the act of Congress entitled, "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; that no bargain or agreement, express or implied, has been made or entered into by or on behalf of this deponent, to sell, transfer, or dispose of said claim, or any part thereof, against said bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of this deponent for assignee, or any action on the part of this deponent, or any other person in the proceedings under said act, has been, is or shall be in any way affected, influenced or controlled.

E. P. GLEASON,
Deposing Creditor.

Subscribed and sworn to before me, May 13, A. D. 1872, and I certify that the proof is satisfactory to me, and that the fees paid for proving this claim are $2.00.

D. C. WINSLOW,
Register in Bankruptcy.

288 *Account annexed to foregoing deposition.*

NEW YORK, *Dec'r* 31, 1869.

Mr. F. M. Fisk bought of E. P. Gleason.

3	gross of double lavar bar, $18	.....	$54
3	" " " " " 15	.....	45
1	" " brass bar	.....	4
1	" Scotch tips	.....	3
	box	.....	25

1870.				
Feb.	8.	3 pal. ane. base, 9	27	
		9 lava tips, 3	27	
				160 25

Credit.

April	1.	Cash	100 00	
				$60 25

289 [Form No. 16.]

Notification of appointment of assignee.

In the district court of the United States for the eastern district of New York.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

EASTERN DISTRICT OF NEW YORK, *ss:*

To Mr. Chas. W. Goddard, of Brooklyn, in the county of Kings and State of New York:

I do hereby certify to you that you were duly appointed assignee of the estate and effects of the above-named bankrupt, at the first meeting of creditors on the 5th day of February, A. D. 1872, and I do further certify that the greater part in value and in number of the creditors of said bankrupt who had proved their claims were present, or were duly represented at said meeting.

Dated at Brooklyn, the 7th day of Feb'y, A. D. 1872.

D. C. WINSLOW.

Acceptance of assignee.

To whom it may concern:

Be it known that I hereby signify my acceptance of the trust of assignee of the estate of the above-named bankrupt this 7th day of Feb'y, A. D. 1872.

C. W. GODDARD.

290 *Memorandum from docket.*

In the district court of the United States for the eastern district of New York.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

At 189 Montague street, in the city of Brooklyn, county of Kings, in said district, on the 7th day of February, A. D. 1872, before Mr. David C. Winslow, register in bankruptcy.

EASTERN DISTRICT OF NEW YORK, *ss:*

MEMORANDUM.—Notified assignee of his appointment and received notice of his acceptance.

Bond filed and approved.
Executed and delivered assignment.

I certify that the above is a true copy of the memorandum in the docket kept by me of my proceedings in the above matter.

D. C. WINSLOW,
Register in Bankruptcy.

291 STATE OF NEW YORK,
City of Brooklyn, ss:

EASTERN DISTRICT OF NEW YORK, *ss:*

At Brooklyn, the 20th day of February, 1872.

The undersigned hereby gives notice of his appointment as assignee of the estate of Francis M. Fisk, of Brooklyn, in the county of Kings and State of New York, within said district, who has been adjudged a bankrupt upon his own petition by the district court of said district.

CHARLES W. GODARD, *Assignee.*

Geo. Woodruff, of the city of Brooklyn, in the county of Kings, being duly sworn, says that he is foreman in the office of the Brooklyn Daily Union, a daily newspaper printed and published in the city of Brooklyn, county of Kings aforesaid, and that the notice of which annexed is a true copy, has been published in said newspaper once in each week for 3 weeks successively, commencing on the 21st day of February, 1872.

GEO. WOODRUFF.

Sworn to this 1st day of June, 1872, before me.

A. G. WUST,
Notary Public.

292 STATE OF NEW YORK,
City of Brooklyn, ss:

EASTERN DISTRICT OF NEW YORK, *ss:*

At Brooklyn, the 20th day of February, A. D. 1872.

The undersigned hereby gives notice of his appointment as assignee of the estate of Francis M. Fisk, of Brooklyn, in the county of Kings and State of New York, said district, who has been adjudged a bankrupt upon his own petition by the district court of said district.

CHARLES W. GODARD,
Assignee.

Wm. H. Sutton, of the city of Brooklyn, being duly sworn, saith that he is a foreman in the office of the Brooklyn Daily Eagle, a daily newspaper published in the city of Brooklyn, in the county of Kings aforesaid, and that the notice, of which the annexed is a true copy, has been published in said newspaper once in each week for three weeks successively, commencing on the 11th day of March, 1872.

(Signed) WM. H. SUTTON.

Sworn and subscribed to this 27th day of May, 1872, before me,

EUGENE M. CAMMEYER,
Notary Public, Kings Co.

293 *Memorandum from docket.*

In the district court of the United States for the eastern district of New York.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

At 189 Montague st., in the city of Brooklyn, county of Kings, in said district, on the 10th day of April, A. D. 1872, before Mr. David C. Winslow, register in bankruptcy.

EASTERN DISTRICT OF NEW YORK, *ss:*

MEMORANDUM.—Ordered amendments of schedules A & B upon the affidavit of the bankrupt.

I hereby certify that the above is a true copy of the memorandum in the docket kept by me of my proceedings in the above matter.

D. C. WINSLOW,
Register in Bankruptcy.

294, 295 [Form No. 6.]

Warrant to messenger.

(Voluntary bankruptcy.)

In the district court of the United States for the eastern district of New York.

In bankruptcy. In the matter of Francis M. Fisk, by whom a petition for adjudication in bankruptcy was filed on the 27 day of December, A. D. 1871, in said court.

EASTERN DISTRICT OF NEW YORK, *ss:*

To the U. S. Marshal of said district, greeting:

Whereas a petition for adjudication of bankruptcy and for relief, under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867, was on the 27 day of December, 1871, filed by Francis M. Fisk, of Brooklyn, county of Kings, in said district, upon which he hath been found and adjudged a bankrupt, there being no opposing party thereto.

And you are further directed to serve written or printed notice forthwith, either by mail or personally, on all creditors upon the schedule filed with the said bankrupt's petition [or, where names may be given you in addition thereto by the debtor], at least ten days before the appointed meeting of said court in the following form, to wit:

To Mr. , of , parish of , and State of , creditor of Francis M. Fisk, bankrupt:

You are hereby notified that a supplementary warrant in bankruptcy has been issued out of the district court of the United States for the eastern district of New York against the estate of Francis M. Fisk, adjudged a bankrupt upon his own petition; that the payment of any debts, and the delivery of any property belonging to said bankrupt, to him, or for his use, and the transfer of any property by him are forbidden by law; that a meeting of the creditors of said bankrupt, to wit:

Creditors.	Place of residence.	Am't debt.
C. K. Madden	Atlanta, Ga	$650
Hoffman & Co	New Orleans, La	55
A. M. Holbrook & Co	do	60
G. Whape	do	
E. P. Gleason	New York	55
Ansel Edwards	New Orleans	405

To prove their debts and choose one or more assignees of his *assignees of his* estate will be held at a court of bankruptcy to be holden on the 13 day of May, A. D. 1872, at 10 o'clock a. m., No. 189 Montague street, in the city of Brooklyn, before Mr. David C. Winslow, register.

SAMUEL R. HARLOW,
United States Marshal, as Messenger, Eastern District of New York.

296 Witness the honorable Charles L. Benedict, judge of said district court, and the seal thereof, at the city of Brooklyn in said district, on the 27 day of April, A. D. 1872.

[L. S. OF THE COURT.] SAMUEL T. JONES,
Clerk of District Court for said District.

Countersigned:
D. C. WINSLOW,
Register of said District.

Return of messenger to accompany warrant.

EASTERN DISTRICT OF NEW YORK, *ss:*

By virtue of the within warrant, to be published by an advertisement times in the newspapers within mentioned, the first publication of which was on the day of , A. D. 187 , in.

On the 27 day of April, A. D. 1872, sent by mail or served personally upon the creditors and others named in said warrant, a copy of the notice required thereby to be sent to or served on them—and all of the said notices were according to the directions set out in this warrant.

S. R. HARLOW,
U. S. Marshal.

Fees.

1. For service of warrant	$2 00
2. For necessary travel miles, at 5 cents per mile, each way	
3. For each written note to creditor named in schedule, 10 cents	
4. For actual and necessary expenses in publication of notices.	

297 *Memorandum from docket.*

In the district court of the United States for the eastern district of New York.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

At 189 Montague st., in the city of Brooklyn, county of Kings, in

said district, on the 27 day of April, A. D. 1872, before Mr. David C. Winslow, regi ter in bankruptcy.

EASTERN DISTRICT OF NEW YORK, *ss:*

MEMORANDUM.—Issued supplementary warrant to marshal to notify the creditors therein of a meeting of creditors before me at 189 Montague street, Brooklyn, N. Y., on the 13 day of May, 1872, at 10 o'clock a. m.

I hereby certify that the above is a true copy of the memorandum in the docket kept by me of my proceedings in the above matter.

D. C. WINSLOW,
Register in Bankruptcy.

298 *Memorandum from docket.*

In the district court of the United States for the eastern district of New York.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

At 189 Montague st., in the city of Brooklyn, county of Kings, in said district, on the 13th day of May, A. D. 1872, before Mr. David C. Winslow, register in bankruptcy.

EASTERN DISTRICT OF NEW YORK:

MEMORANDUM.—Marshal returned supplemental warrant duly executed.

No creditors appeared.

I hereby certify that the above is a true copy of the memorandum in the docket kept by me of my proceedings in the above matter.

D. C. WINSLOW,
Register in Bankruptcy.

299 United States district court, eastern district of New York.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

We, the undersigned, being the majority in number and value of the creditors of the above-named bankrupt to whom they have become liable as principal debtors, and who have proved their claims herein, and whose debts were contracted subsequent to January first, 1869, do hereby assent to the discharge of the above-named bankrupt.

In token of our assent thereto we have hereunto set our hands and seals.

Name.	Residence.	Amount.
L. Van Buskirk	New York, N. Y	3,950 00
Geo. Sutton	Louisville, Ky	3,461 00

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Francis M. Fisk, being duly sworn, says that he is personally acquainted with the creditors who have signed their, the foregoing,

300 consent and know their handwriting; that the signatures annexed to said consent is the signatures of the said parties who have proved their claims against his estate.

F. M. FISK.

Sworn to and subscribed before me this 10th day of April, 1872.

EDWARD S. OWEN,
U. S. Commissioner for the Southern District of New York.

301 [Form No. 51.]

Petition of bankrupt for his discharge.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

To the Hon. Chas. L. Benedict, judge of the district court of the United States for the eastern district of New York.

Francis M. Fisk of New York and State of New York, in said district, respectfully represents that on the 27 day of December last past, he was duly declared a bankrupt under the act of Congress in that case made and provided; that he hath duly surrendered all his property and rights of property, and fully complied with and obeyed all the orders and directions of the court touching his bankruptcy, and is ready to submit himself to any other and further examinations, orders, and directions which the court may require; that debts have been proved against him, and that no assets have come to the hands of the assignee of his estate.

Wherefore he prays that he may be decreed by the court to have a full discharge from all his debts provable under said bankrupt act, and a certificate thereof granted according to the said act of Congress.

Dated this 10 day of April, A. D. 1872.

F. M. FISK,
Bankrupt.

302 UNITED STATES OF AMERICA,
Eastern District of New York:

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

We, the undersigned, being the majority in number and value of the creditors of the above named bankrupt, to whom they have become liable as principal debtors, and who have proved their claims herein, and whose debts were contracted subsequent to January 1st, 1869, do hereby assent to the discharge of the above named bankrupt.

In token of our assent thereto, we have hereunto set our hands and seals.

Name.	Residence.	Amounts.
Geo. Sutton. [L. S.]	Louisville, Ky	$3,461 00
L. Van Buskirk. [L. S.]	New York City	3,950 00

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Francis M. Fisk, being duly sworn, says that he is personally acquainted with the creditors who have signed the foregoing consent and

knows their handwriting; that the signatures annexed to said
303 consent is the signatures of the said parties who have proved their claims against his estate.

F. M. FISK.

Sworn before me this 10th day of April, 1871.

EDWARD L. OWEN,
U. S. Commissioner for the Southern District of New York.

304 [Form No. 51.)

Petition of bankrupt for his discharge.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

To the Hon. Chas. L. Benedict, judge of the district court of the United States for the eastern district of New York.

Francis M. Fisk of New York City and State of New York, in said district, respectfully represents that on the 27 day of December last past, he was duly declared a bankrupt under the act of Congress in that case made and provided; that he hath duly surrendered all his property and rights of property, and fully complied with and obeyed all the orders and directions of the court touching his bankruptcy, and is ready to submit himself to any other and further examinations, orders and directions which the court may require; and that no assets have come to the hands of his assignee.

Wherefore he prays that he may be decreed by the court to have a full discharge from all his debts provable under said bankrupt act, and a certificate thereof granted according to the said act of Congress.

Dated this 10 day of April, A. D. 1872.

F. M. FISK,
Bankrupt.

305 *Certified copy order of reference on petition for discharge.*

At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms in the city of Brooklyn, on the 10th day of April, in the year of our Lord one thousand eight hundred and seventy-two.

Present, the honorable Charles L. Benedict, district judge.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy. 696.

On reading and filing the petition of Francis M. Fisk for a discharge from all his debts provable under the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, and for a certificate thereof, it is ordered that it be referred to David C. Winslow, the register in bankruptcy in charge of the above matter, to make an order to show cause
306 thereon, and to sit in chambers on the return of said order, and to pass the last examination of the bankrupt if there be no opposition.

And it is further ordered that said register certify to this court whether the said bankrupt has in all things conformed to his duty under the said act, and has conformed to all the requirements of the said act.

CHAS. L. BENEDICT.

I, Samuel T. Jones, clerk of the district court of the United States for the eastern district of New York, do hereby certify that the above is a true copy of an order made in the above-entitled matter.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of Brooklyn, in the eastern district of New York, this 13 day of May, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the said United States the ninety-sixth.

SAMUEL T. JONES, *Clerk.*

307 *Petition of bankrupt for his discharge.*

In the district.

Order of court on petition of bankrupt for his discharge.

U. S. district court for the eastern district of New York.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

At No. 189 Montague street, Brooklyn, in said district, on the 14th day of May, A. D. 1872, before D. C. Winslow, one of the registers of said district court, in bankruptcy.

EASTERN DISTRICT OF NEW YORK, *ss:*

On reading the certified copy of the petition of the said Francis M. Fisk, bankrupt, for his discharge, and the order of reference thereon, there being no opposing interest, it is ordered by the court that a hearing be had upon the same on the 27th day of May, A. D. 1872, before the court at chambers, at the office of D. C. Winslow, register, No. 189 Montague street, Brooklyn, in said district, at 10 o'clock a. m., and
308 that notice thereof be published in Brooklyn Daily Union and in the Picayune, a newspaper printed in New Orleans, Louisiana, two times, and that all creditors who have proved their debts, and other persons in interest, may appear at the said time and place, and show cause, if any they have, why the prayer of the said petition should not be granted.

And it is further ordered by the court that all such creditors whose places of residence are known shall be entitled to a service of notice of the said petition and order, either personally or by letter, addressed to them at their known usual place of residence, attested by the clerk of the court, or served at their usual place of abode by the marshal or his deputy, or sent by mail, whereof due proof shall be given.

Witness the honorable Charles L. Benedict, judge of the said court, and the seal thereof, at Brooklyn, in said district, on the 14th day of May, 1872.

SAMUEL T. JONES,
Clerk of District Court for said District.

Granted 14th day of May, 1872.

D. C. WINSLOW, *Register.*

309 *Memorandum from docket.*

In the district court of the United States, for the eastern district of New York.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

At 189 Montague st., in the city of Brooklyn, county of Kings, in said

district, on the 14 day of May, A. D. 1872, before Mr. David C. Winslow, register in bankruptcy.

EASTERN DISTRICT OF NEW YORK, *ss:*

MEMORANDUM.—Pursuant to order of reference, issued order upon petition of bankrupt for discharge, for hearing before me May 27, 1872, at 10 a. m., at 189 Montague street, Brooklyn., N. Y.

I hereby certify that the above is a true copy of the memorandum in the docket kept by me of my proceedings in the above matter.

D. C. WINSLOW,
Register in Bankruptcy.

In the district court of the United States for the eastern district of New York. In bankruptcy.

310 In the matter of Francis M. Fisk, bankrupt.

Notice is hereby given that a petition has been filed in said court by said Francis M. Fisk, in said district, duly declared a bankrupt under the act of Congress of March 2, 1867, and acts amendatory thereof, for a discharge and certificate thereof, from all his debts and other claims provable under said act, and that the 27 day of May, 1872, at 10 a. m., at the office of D. C. Winslow, register in bankruptcy at 189 Montague street, in the city of Brooklyn, is assigned for the hearing of the same, when and where all creditors who have proved their debts, and other persons in interest may attend and show cause, if any they have, why the prayer of the said petition should not be granted.

Dated at Brooklyn, 14 May, 1872.

SAMUEL T. JONES, *Clerk.*

311 *Creditors who have proved their debts at first meeting.*

In the district court of the United States for the eastern district of New York.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

At No. 189 Montague street, in the city of Brooklyn, county of Kings, in said district, on the 14th day of May, A. D. 1872, before Mr. David C. Winslow, register in bankruptcy.

EASTERN DISTRICT OF NEW YORK, *ss:*

The following is a list of creditors who have proved their debts.

Names of creditors.	Residence.	Debts proved.
E. P. Gleason	135 Mercer st., N. Y.	60 25
George Sutton	Louisville, Ky.	3,461 00
Laurence Van Buskirk	Brooklyn, N. Y.	3,950 00

D. C. WINSLOW, *Reg.*

312 *Certificate of mailing notices to creditors.*

District court of the United States for the eastern district of New York.
In bankruptcy.

In the matter of Francis M. Fisk, bankrupt.

EASTERN DISTRICT OF NEW YORK, *ss:*

Thomas L. Harrison, being duly sworn, deposes and says that on the 14th day of May, 1872, he deposited in the post-office in the city of Brooklyn, three notices, by letter, of which the annexed is a true copy, addressed to persons named in the annexed list of creditors, and that proper postage stamps were placed thereon.

T. L. HARRISON.

Sworn to before me this 27 day of May, 1872.

SAMUEL T. JONES,
U. S. Commissioner.

EASTERN DISTRICT OF NEW YORK, *ss:*

I hereby certify that, on the 14th day of May, 1872, I caused
313 notices, by letter, of which the annexed is a true copy, to be duly mailed to each creditor named in the annexed list as set forth in the annexed affidavit.

In testimony whereof I have caused the seal of the said court to be hereunto affixed this 27 day of May, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the ninety-sixth.

SAMUEL T. JONES, *Clerk.*

In the district court of the United States for the eastern district of New York. In bankruptcy.

In the matter of Francis M. Fisk, bankrupt.

Notice is hereby given that a petition has been filed in said court by Francis M. Fisk, in said district, duly declared a bankrupt, under the act of Congress of March 2, 1867, and acts amendatory thereof, for a discharge and certificate thereof from all his debts and other claims
provable under said act, and that the 27 day of May, 1872, at 12
314 o'clock m., at the office of D. C. Winslow, register in bankruptcy, at 189 Montague streets, in the city of Brooklyn, is assigned for hearing of the same, when and where all creditors who have proved their debts, and other persons in interest, may attend and show cause, if any they have, why the prayer of the said petition should not be granted.

Dated at Brooklyn, on the 14 day of May, 1872.

SAMUEL T. JONES, *Clerk.*

STATE OF NEW YORK,
City of Brooklyn:

Geo. Woodruff, of the city of Brooklyn, in the county of Kings, being duly sworn, says that he is a foreman in the office of the Brooklyn Daily Union, a daily newspaper published in the city of Brooklyn, county of Kings, and that the notice, of which the annexed is a true copy, has

been published in said newspaper two days successively, commencing on the 15th day of May, 1872.

GEO. WOODRUFF.

Sworn to this 27 day of May, 1872, before me.

315 EDWARD TUSCH,
Notary Public.

EASTERN DISTRICT OF NEW YORK, *ss:*

I, Samuel T. Jones, clerk of the district court of the United States for the eastern district of New York, do hereby certify that I caused a notice, of which the annexed is a true copy, to be published as set forth in the within affidavit.

Witness my hand and the seal of the said court, this 27th day of May, A. D. 1872.

SAMUEL T. JONES, *Clerk.*

In the district court of the United States for the eastern district of New York. In bankruptcy.

In the matter of Francis M. Fisk, bankrupt.

Notice is hereby given that a petition has been filed in said court by Francis M. Fisk, in said district, duly declared a bankrupt under
316 the act of Congress of March 2, 1867, and acts amendatory thereof, for a discharge and certificate thereof from all his debts and other claims provable under said act, and that the 27th day of May, 1872, at 10 o'clock a. m., at the office of D. C. Winslow, register in bankruptcy, at No. 189 Montague street, in the city of Brookly', is assigned for the hearing of the same, when and where all creditors who have proved their debts and other persons in interest may attend and show cause, if any the' have, why the prayer of the said petition should not be granted.

Dated at Brooklyn on the 14 day of May, 1872.

SAMUEL T. JONES, *Clerk.*

EASTERN DISTRICT OF NEW YORK, *ss:*

I, Samuel T. Jones, clerk of the United States district court for the eastern district of New York, do hereby certify that I caused a notice, a copy of which is hereto annexed, to be published two times in the Picayune, a newspaper published in New Orleans, La.

Witness my hand & seal of said court, this 27th day of May, A. D. 1872.

SAMUEL T. JONES, *Clerk.*

317 *Last examination of bankrupt.*

In the district court of the United States for the eastern district of New York.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

At No. 189 Montague street, in the city of Brooklyn, county of Kings, in said district, on the 27th day of May, A. D. 1872, before Mr. David C. Winslow, register in bankruptcy.

EASTERN DISTRICT OF NEW YORK, *ss:*

Francis M. Fisk, being duly sworn and examined, says that he has not wilfully sworn falsely in his affidavit annexed to his petition, schedule, or inventory herein, or upon any examination in the course of the proceedings in bankruptcy in relation to any material fact concerning his estate or his debts, or to any other material fact, nor has he concealed any part of his estate or effects, or any books or writings relating thereto, or been guilty of any fraud or negligence in the care or custody or delivery to the assignee of the property belonging
318 to him at the time of the presentation of his petition and inventory, excepting such property as he is permitted to retain under the provisions of said act, nor has he caused, permitted, or suffered any loss, waste, or destruction thereof; nor has he, within four months before the commencement of such proceedings, procured his lands, chattels, or money, to be attached, sequestered, or seized in execution; nor has he since the passage of said bankrupt act destroyed, mutilated, altered, or falsified any of his books, documents, papers, writings, or securities, or made or been privy to the making of any false or fraudulent entry in any book of account or other document, with intent to defraud his creditors, nor has he removed or caused to be removed any part of his property from this district, with intent to defraud his creditors; nor has he given any fraudulent preference contrary to the provisions of said act, or made any fraudulent payment, gift, transfer, conveyance, or assignment of any part of his property, or lost any
319 part thereof in gambling, or admitted a false or fictitious debt against his estate; nor having knowledge that any person has proved such false or fictitious debt, has he *per*iled to disclose the same to his assignee within one month after such knowledge; nor has he, or any person in his behalf, procured the assent of any creditor to the discharge, or influenced the action of any creditor at any stage of the proceedings by any pecuniary consideration or obligation; nor has he, in contemplation of becoming bankrupt, made any pledge, payment, transfer, assignment, or conveyance of any part of his property, directly or indirectly, absolutely or conditionally, for the purpose of preferring any creditor or person having a claim against him, or who is or may be under liability for him, or for the purpose of preventing the property from coming into the hands of the assignee, or of being distributed under this act in satisfaction of his debts; nor has he been convicted of any misdemeanor under said act, or of any fraud whatever contrary to the true intent of said act; nor has he done, suffered, or been privy
320 to any act, matter, or thing specified in said act as a ground for withholding such discharge, or as invalidating such discharge if granted.

F. M. FISK.

Sworn and subscribed before me, this 27 day of May, 1872.

D. C. WINSLOW,
Register in Bankruptcy.

Memorandum from docket.

In the district court of the United States for the eastern district of New York.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

189 Montague st., in the city of Brooklyn, county of Kings, in said

district, on the 27th day of May, A. D. 1872. Before Mr. David C. Winslow, register in bankruptcy.

EASTERN DISTRICT OF NEW YORK, *ss:*

MEMORANDUM.—No creditors appeared, nor was cause shown why bankrupt should not be discharged. Bankrupt filed written
321 consent of a majority in number and value of his creditors who had proved their claims to whom he was liable as principal debtor for debts contracted since 1st January, 1869.

I hereby certify that the above is a true copy of the memorandum in the docket kept by me, of my proceedings in the above matter,

D. C. WINSLOW,
Register in Bankruptcy.

Assignees' return of no assets.

In the district court of the United States for the eastern district of New York:

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

At the city of Brooklyn, county of Kings, in said district, on the 29th day of May, 1872.

EASTERN DISTRICT OF NEW YORK, *ss:*

On the day aforesaid, before me comes Charles W. Goddard, of
322 the city of Brooklyn, county of Kings, and State of New York, and makes oath and says that he, this deponant, as assignee of the estate and effects of the above named bankrupt, has neither received nor paid any moneys on account of the estate, except his necessary disbursements as such assignee; that no proofs of claim have been filed with him except by George Sutton, Laurence Van Buskirk, and E. P. Gleason.

C. W. GODDARD.

Subscribed and sworn to at Brooklyn this 29th day of May, A. D. 1872, before me.

JAMES T. DWIGHT,
Register in Bankruptcy, Southern Dist of N. Y.

Memorandum from docket.

In the district court of the United States for the eastern district of New York.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

323 At the United States court-house, corner of Montague and Clinton streets, in the city of Brooklyn, county of Kings, in said district, on the 1st day of June, A. D. 1872, before *Mr.* David C. Winslow, register in bankruptcy.

EASTERN DISTRICT OF NEW YORK, *ss:*

MEMORANDUM.—Received report of assignee.

I hereby certify that the above is a true copy of the memorandum in the docket kept by me, of my proceedings in the above matter.

D. C. WINSLOW,
Register in Bankruptcy.

Certificate of register on petition for discharge.

In the district court of the United States for the eastern district of New York.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

At 189 Montague street, in the city of Brooklyn, county of Kings, in said district, on the 27th day of May, A. D. 1872, before *Mr.*
324 David C. Winslow, register of said court, in bankruptcy.

I, David C. Winslow, register in bankruptcy for said district, to whom the petition of the above-named bankrupt for a discharge from all his debts provable under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States, approved March 2, 1867," was referred, by a special order of the court, dated the 13th day of May, A. D. 1872, do hereby certify that, in pursuance of and obedience to said order, I made and issued an order to show cause why the prayer of the said petition should not be granted, which said order I made returnable before me at the time and place above mentioned.

And I do further certify that at the said time and place I sat in chambers on the return of said order, and there being no opposition, passed the last examination of the bankrupt above named.

And I do further certify that no creditor who had proved his
325 debts, no other person in interest appeared on the return of said order to show cause, nor was any cause shown, why the prayer of the petition of the said bankrupt for his discharge under the said act should not be granted.

And I do further certify that the said bankrupt has in all things conformed to his duty under the said act, and to all the requirements of the said act.

In witness whereof I, the said register, have hereunto set my hand this 1st day of June, 1872.

D. C. WINSLOW,
Register in Bankruptcy.

Final order and decree for discharge.—Filed and entered the 20th of July, 1872.

At a stated term of the district court of the United States of America for the eastern district of New York, at the United States court-rooms in the city of Brooklyn, on Saturday the 20th day of July, in the
326 year of our Lord one thousand eight hundred and seventy-two.
Present, the honorable Charles L. Benedict, district judge.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

Whereas Francis M. Fisk, of the city of Brooklyn, county of Kings, and State of New York, has been duly adjudged a bankrupt, under the act of Congress establ'ing a uniform system of bankruptcy throughout the United States, and appears to have conformed to all the requirements of law in that behalf:

It is therefore ordered by the court that said Francis M. Fisk be forever discharged from all debts & claims which by said act are made provable against his estate and which existed on the 27th day of De-

cember, A. D. one thousand eight hundred and seventy-one, on
327 which day the petition for adjudication was filed by him, excepting such debts, if any, as are by said act excepted from the operation of a discharge in bankruptcy.

CHAS. L. BENEDICT.

Memorandum from docket.

In the district court of the United States for the eastern district of New York.

In the matter of Francis M. Fisk, bankrupt. In bankruptcy.

At the United States court-house, corner of Montague and Clinton streets, in the city of Brooklyn, county of Kings, in said district, on the 10th day of April, A. D. 1872, before Mr. David C. Winslow, register in bankruptcy.

EASTERN DISTRICT OF NEW YORK, *ss:*

MEMORANDUM.—Upon the affidavit of Francis M. Fisk ordered that Schedules A & B be amended by adding thereto Schedule A, D. C. W., and schedule B, D. C. W.

328 D. C. WINSLOW, *Reg.*

I hereby certify that the above is a true copy of the memorandum in the docket kept by me of my proceedings in the above matter.

Register in Bankruptcy.

United States district court, eastern district of New York.

In the matter of F. M. Fisk, bankrupt. In bankruptcy.

Francis M. Fisk, being duly sworn, says that on the 27' day of December, 1871, he filed his petition in bankruptcy, with the proper schedules thereto annexed, in the office of the clerk of said court, and that he was afterwards duly adjudicated a bankrupt by said court; that from the schedule of creditors whose claims are unsecured were
329 omitted the names of certain creditors by mistake; that from "Schedule, B choses in action," were omitted throug' mistake certain debts due him on open account; that the cause of said omissions is that at the time of making the said schedules he had not in his possession all his books of accounts of which he now has possession.

He therefore prays said schedules may be amended by annexing thereto the schedules hereto annexed.

F. M. FISK.

Sworn to before me this 10th day of April, 1871.

EDWARD L. OWENS,

U. S. Commissioner for the Southern District of New York.

330 (Petition by debtor.)

Amended Schedule A., D. C. W. [3.]

Creditors whose claims are unsecured.

[N. B.—When the name and residence (or either) of any drawer, maker, endorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name, residence, and occupation of the holder known to the petitioner. The debt due to each creditor must be stated in full and any claim by way of set-off stated in the schedule of property. The nature of each debt and demand, whether founded on written security, obligation, contract, or otherwise, and also the true cause and consideration of such indebtedness in each case, and the place where such indebtedness occurred.]

Reference to ledger or voucher.	Names of creditors.	Residence and occupation.	Amount.	When and where contracted.	Nature and consideration of the debt, and whether any judgment bond, bill of exchange, promissory note, &c. and whether contracted as copartner or joint contractor with any other person; and if so, with whom.
	C. H. Maddox.....	Atlanta, Georgia.	650	1869–1872, Atlanta, Georgia.	Legal services; no judgment, note, or other paper.
	Hoffman & Co.....	New Orleans, Louisiana.	55	1870 & 1871, New Orleans, La.	Merchandize; no judgment, note or other paper.
	A. M. Holbrook & Co., Picayune Office.	New Orleans, La.	60 00	1871, New Orleans, Louisiana.	Advertising; no judgment, note or other judgment.
	E. P. Gleason.....	New York City.	55 00	1871, New York City.	Merchandize; no judgment, note or other paper.
	W. Whalpe.....	New Orleans, Louisiana.	Unknown.	New Orleans, La., 1871.	Costs of court, 6th district, New Orleans; no judgment, note, or other paper.
	Ansel Edwards....	New Orleans, Louisiana.	405	1862, New Orleans, Louisiana.	Merchandize; judgment in 6th district court of New Orleans.

Amended oath to Schedule A.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this 10 day of April, A. D. 1872, before me personally came Francis M. Fisk, the person mentioned in and who subscribed to the foregoing amended Schedule marked A, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his debts, etc., in accordance with the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, which by mistake were omitted in the schedule filed with his petition.

EDWARD L. OWEN,
U. S. Comm'r for the Southern District of New York.

331 (Petition by debtor.)

Amended Schedule B. [3.]

Choses in action.

		Dollars.	Cents.
a.	Debts due petitioner on open account:		
	P. P. Pease, Atlanta, Ga	1,500	
	Doct. Massay, do	900	
	1st Nat'l Bank, N. O., La	5,000	
b.		262	
	Jacob Barker, do	325	
	John Walsh, d o	325	
	Tandy & Co., Shreveport, La	900	
	R. A. Phelps & Co., do	650	
c.	Dr. G. W. Chapman, Monroe	1,500	
	Caleb Price, Mobile	1,500	
	J. H. Barrett, Atlanta, Ga	100	
	Thomas H. Barker, New Orleans, La	1,000	
d.	H. A. Crawford, Atlanta, Ga	300	
	N. O. Gullett, New Orleans, La	3,500	
	A. P. Dermitt	65	

Amended oath to Schedule B.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

On this 10 day of April, A. D. 1872, before me personally came Francis M. Fisk, the person mentioned in, and who subscribed to the amended Schedule, marked B, and who, being by me first duly sworn [or affirmed], did declare the said schedule to be a statement of his estate, both real and personal, in accordance with the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, which were omitted by mistake in the schedule filed with his petition.

EDWARD L. OWEN,
For the Southern District of New York.

332 To the Hon. Chas. L. Benedict, judge of the district court of the United States for the eastern district of New York:

The petition of Francis M. Fisk, of the city of Brooklyn, in the county of Kings, and State of New York, and district aforesaid, respectfully represents that he has resided for the longest period during the six months next immediately preceeding the filing of this petition at the said city of Brooklyn, within said judicial district; that he owes debts exceeding the amount of three hundred dollars, and is unable to pay all of same in full; that he is willing to surrender all his estate and effects for the benefit of his creditors, and desires to obtain the benefit of the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867.

That the schedule hereto annexed, marked A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said act.

333 That the schedule hereto annexed, marked B, and verified by your petitioner's oath, contains an accurate inventory of all his estate, both real and personal, assignable under the provisions of said act.

Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said act, and that he may be decreed to have a certificate of discharge from all his debts provable under the same.

F. M. FISK.

GOODRICH & WHEELER,
Attorneys for Petitioner.

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

I, Francis M. Fisk, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true to the best of my knowledge, information, and belief; and I do further make that I am citizen of the United States of America, and that I will bear true faith and allegiance to the same.

(Signed) F. M. FISK, *Petitioner.*

Subscribed and to before me this 27th December, A. D. 1871.
D. C. WINSLOW, *Register.*

334 (Petition by debtor.)

SCHEDULE A. [1.]

Statement of all creditors who are to be paid in full, or to whom priority is secured, according to the provisions of the 28th section of said act.

Order of payment: Preferred claims.	Reference to ledger or voucher.	Names of creditors.	Residence and occupations.	Amount.	When and where contracted.	Nature and consideration of the debt and whether contracted as copartner or joint contractor, and if so, with whom.
1. Debts due the United States, and taxes and assessments under the laws thereof	.....	None	.....	.....	.....	
2. Debts due to the State of Louisiana, and taxes and assessments under the laws of said State	.....	None	.....	.....	.....	
3. Wages due clerk, servant, etc., to an amount not exceeding $50, for labor performed within six months	.....	None	.....	.....	.....	
4. Other debts preferred by said act	.....	Taxes due the city of New Orleans	.....	Unknown	.....	
		Taxes due the State of Louisiana	.....	Unknown	.....	

F. M. FISK, *Petitioner.*

335 (Petition by debtor.)

SCHEDULE A. [2.]

Creditors holding securities.

[N. B.—Particulars of securities held, with dates of same, and when given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the 11th section of the act, whether contracted as copartner or joint contractor with any other person; and, if so, with whom.]

Reference to ledger or voucher.	Names of creditors.	Residence and description.	When and where contracted.	Value of securities.	Amount of debts.
None ..	Joseph D. Weaver..	New Orleans, Louisiana. Two mortgages on real estate in said city of New Orleans, one dated February 5th, 1868, the other dated April 12th, 1866, and given at the date thereof.	April 12th, 1866; February 5th, 1868. New Orleans, La.	11,258 33	11,258 33
None ..	W. W. Washburne..	New Orleans, Louisiana. Three mortgages on real estate in said city of New Orleans, dated one March 6th, 1866, and two March 21st, 1866 and given at date thereof.	March 21st, 1866; March 26th 1866. New Orleans, Louisiana.	5,488 70	5,488 70
None ..	Milton Benner.....	New Orleans, Louisiana. Two mortgages on real estate in said city of New Orleans, dated March 13, 1869, and March 21, 1866, given at the date thereof.	March 21, 1866; March 13, 1866. New Orleans, La.	6,800 00	6,800 00
None ..	Frederick G. Fisk..	New Orleans, Louisiana. A mortgage on real estate in said city of New Orleans, dated about 1856, given at the date thereof.	About 1856. New Orleans, La.	8,000 00	8,000 00

F. M. FISK. *Petitioner.*

SCHEDULE A. [3.

Creditors whose claims are unsecured.

[N. B.—When the name and residence (or either) of any drawer, maker, endorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name, residence, and occupation of the last holder known to the petitioner. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property. The nature of each debt and demand, whether founded on written security, obligation, contract, or otherwise, and also the true cause and consideration of such indebtedness in each case, and the place where such indebtedness occurred.]

Reference to ledger or voucher.	Names of creditors.	Residence and occupation.	Amount.	When and where contracted.	Nature and consideration of the debt, and whether any judgment bond, bill of exchange, promissory note, &c., and whether contracted as copartner or joint contractor with any other person; and if so, with whom.
None.	A. G. Farwell & Co. (members unknown).	Boston, Mass.; merchants.	15,735 59	Boston, Mass., 1867 & '68.	Balance due on settlement of cotton %c.; judgment.
"	Alex. Wheeleis...	New Orleans, La.; banker.	960 00	New Orleans, La., 1870.	Operation in gold; judgment & appealed.
"	Victor Fassman ..	New Orleans, La.; cotton press.	1,708 00	New Orleans, La., 1866.	Rent; judgment.
"	(Unknown) Briggs.	New Orleans, La.; broker.	6,000 00	Montgomery, Ala., 1862.	Assignment of a judgment from E. Lockett.
"	Henry Lindop.....	New Orleans, La.; slater.	115 00	New Orleans, 1870.	Slating; no judgment, note, or other paper.
"	Robert & Company (members unknown).	New Orleans, La.; sash & blinds.	315 00	Do. 1870.	Sashes & blinds; note for am't; no judgment.
"	Mary Thompson..	New Orleans, La.; servant.	200 00	Do. 1870.	Balance due for wages; no judgment, note, or other paper.
"	Mary A. Goff	New Orleans, La.; no business.	600 00	Do. 1861.	"Pickwickian" claim; judgment.
"	J. Monroe Mackie.	New Orleans, La.; no business.	5,751 00	Do. 1871.	Money loaned; no judgment, note, or other paper.
"	Higgins & Greene; (unknown) Higgins, (unknown) Green.	San Francisco, California; bankers.	6,250 00	San Francisco, California, 1861.	Money and acceptance; no judgment, note, or other paper.
"	William B. Morris.	Blois City, Idaho; banker.	5,333 00	New Orleans, La., 1861.	Money; no judgment, note, or other paper.
"	George Sutton	Louisville, Ky.; merchant.	3,461 00	Louisville, Ky., from 1865 to 1871.	Board & education of grand-children; no judgment, note, or other paper.
"	Samuel Williams..	New York City; lawyer.	760 00	New York City, about 1855.	Legal service; judgment.
"	J. C. Stuart.....	New Orleans, La.; lumber.	100 00	New Orleans, La., 1870.	Lumber, bricks, &c.; no judgment, note, or other paper.
"	Whitaker	Atlanta, Ga. (unknown).	500 00	Atlanta, Ga., 1867.	Claim for interest; no judgment, note, or other paper in suit.
"	Queene.....	Atlanta, Ga.....	350 00	Do. 1867.	Same; same.
"	Leonard Vanbuskirk.	New York City; merchant.	3,950 00	New York City, 1871.	Money; no judgment, note, or other paper.
"	Dr. Maxwell.....	New York City; physician.	25 00	New York City, 1870.	Medical attendance; no judgment, note, or other paper.

F. M. FISK, *Petitioner.*

337 (PETITION BY DEBTOR.)

SCHEDULE A. [4.]

Liabilities on notes or bills discounted which ought to be paid by the drawers, makers, or acceptors.

N. B.—The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers, or acceptors thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the petitioner should be stated, and his business and place of residence. The same particulars as to the notes or bills on which the petitioner is liable as endorser.

Reference to ledger or voucher.	Names of holders as far as known.	Place of residence and occupation.	Place where contracted.	Amount.	Nature of liability, whether same was contracted as copartner or joint contractor, or with any other person; and if so, with whom.
	None.				

SCHEDULE A, NO. 5.—ACCOMMODATION PAPER.

	None.				

Oath to schedule A.

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

On this 27 day of December, A. D. 1871, before me personally came Francis M. Fisk, the person mentioned in and who subscribed to the foregoing petition and schedule, marked A, respectively, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his debts, &c., in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867.

D. C. WINSLOW, *Register.*

338 (PETITION BY DEBTOR.)

SCHEDULE B. [1.]

Statement of all real and personal estate and effects whatever, which are now in the possession, enjoyment, or under the control of the petitioner, or which are held by any other person in trust for his use, or to the possession or enjoyment of which he is entitled at the date of filing petition.

[INTEREST IN LANDS.]

Particular description of real estate owned by petitioner, or held by him, and whether under contract or lease.	Encumbrances thereon, if any, and dates thereof.	Statement or all particulars relating thereto.	Estimated value.
The following property, situated in the city of New Orleans, State of Louisiana, house and lot number 157 Camp st.	Mortgage & taxes, about $16,000.00, March 13 & 21st, 1866; Feb'y 5, 1861.	.....	18,000 00
House, store, and lot, number 22, Natchez.	Mortgage and taxes, about $9,000.00, April, 1856.	.....	9,000 00
Store and lots, number 133 & 135 New Levee st.	Mortgage & taxes, about $5,000, Feb'y 5, 1868.	.....	8,000 00
Warehouse and two lots, 145 & 147, New Levee st.	Mortgage & taxes, about $3,000, about M'ch 1, 1866.	.....	4,000 00
School-house & 4 lots, corner Josephine & Fulton st.	Mortgage & taxes, about $7,000, M'ch, 1866.	.....	8,000 00
Two lots on Jackson, bet. Rousseau & Fulton st.	Mortgage & taxes, about $2,000, M'ch 21, 1866.	.....	2,500 00
Lot, corner Rocheblane & Poydras sts.	Mortgage & taxes, about $300, March, 1866.	.....	400 00

F. M. FISK, *Petitioner.*

339 (PETITION BY DEBTOR.)

SCHEDULE B.

Personal property.

	Dollars. Cents.
a. Cash on hand	None.
b. Bills of exchange, promissory notes, or securities of any description (each to be set out separately)	None.
c. Stock in trade, in my business of at of the value of	None.
d. Household goods and furniture, household stores, wearing apparel and ornaments of the person	None.
e. Books, prints and pictures	None.
f. Horses, cows, sheep and other animals	None.
g. Carriages and other vehicles	None.
h. Farming stock and implements of husbandry	None.
i. Shipping and in vessels	None.
k. Machinery, fixtures, and apparatus used in business, with the place where each is situated	None.
l. Goods or personal property of any description, with the place where each is situated, five cotton gins and sundry articles seized by the sheriff of the parish of Orleans, State of Louisiana, under an execution in favor of A. G. Farwell and Company, about	$750 00

Oath to Schedule B.

UNITED STATES OF AMERICA,
District Court of Louisiana, ss:

On this day of A. D. 187 , before me personally came the person mentioned in, and who subscribed to the foregoing petition and schedule, marked B, respectively, and who being by me first duly sworn [or affirmed], did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the

act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

F. M. FISK, *Petitioner.*

Register in Bankruptcy.

340 (PETITION BY DEBTOR.)

SCHEDULE B.

Choses in action.

	Dollars. Cents.
a. Debts due petitioner on open account:	
Jacob Denny	5,000 00
A. H. Walker	1,500 00
J. M. Cullen	250 00
Hosack & Company	500 00
S. L. Langdon	600 00
Edward Heath	2,000 00
Thomas Barker	1,000 00
b. Stock in incorporated companies, and interest in joint stock companies	None.
c. Policies of insurance	None.
d. Unliquidated claims of every nature, with their estimated value:	
Edward Wright and others	46,000 00
Sheppard and McGinnis	79,000 00
J. L. Sterry	30,000 00
J. M. Moss	2,300 00
Underwood and others	2,000 00
N. C. Wood	350 00
Benjamin F. Butler	250,000 00
Davidson Hill & Lindop	1,500 00
C. S. Sauvinet	1,500 00
Joseph D. Weaver	2,000 00
A. T. Moulton	11,000 00

F. M. FISK, *Petitioner.*

341 (PETITION BY DEBTOR.)

SCHEDULE B.

Property in reversion, remainder, or expectancy, including property held in trust for the petitioner, or subject to any power or right to dispose of, or to charge.

[N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same as far as known to the petitioner.]

General interest.	Particular description.	Supposed value of my interest.
		Dollars. Cents.
Interest in land	None	
Personal property	None	
Property in money, stock, shares, bonds, annuities, etc.	None	
		Amount realized from proceeds of property conveyed.
		Dollars. Cents.
Rights and powers	None	
Property heretofore conveyed for benefit of creditor		
What portion of debtor's property has been conveyed by deeds of assignment, or otherwise, for benefit of creditors, date of such deed, name and address of party to whom conveyed; amount realized therefrom and disposal of same, so far as known to petitioner	None	

F. M. FISK, *Petitioner.*

342 (PETITION BY DEBTOR.)

SCHEDULE B.

A particular statement of the property claimed as excepted from the operation of said act, by the provisions of the 14th section thereof, giving each item of property and its valuation; and, if any portion of it is real estate, its location, description, and present use.

[N. B.—The property claimed to be exempt under the laws of any State is to be described separately from the rest, and reference given to the statute of the State creating the exception.]

		Valuation.	
		Dollars.	Cents.
Property claimed to be excepted from the operations of said act, and which may be set apart by the assignee under the 14th section	Wearing apparel, consisting of sundry coats, pants, vests, &c		
Property claimed to be exempt by State laws; its valuation; whether real or personal estate; its description and present use; and under what State law exemption is claimed	Wearing apparel		

F. M. FISK, *Petitioner.*

343 [PETITION BY DEBTOR.]

SCHEDULE B.

The following is a true list of all books, papers, deeds, and writing relating to my trade, business dealings, estate, and effects, or any part thereof, which, at the date of this petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit, or advantage, and also of all others which have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason of their custody of the same.

Books.—Ledgers, day-books, &c.

Deeds.—Deeds property specified in Schedule B, No. 1.

Papers, etc.—Letters, bill, &c.

Oath to Schedule B.

UNITED STATES OF AMERICA,
Eastern District of New York, ss:

On this 27 day of December, A. D. 1871, before me personally came F. M. Fisk, the person mentioned in and who subscribed to the foregoing petition and schedule marked B, respectively, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867.

F. M. FISK,
Petitioner.

D. C. WINSLOW,
Register in Bankruptcy.

344 *Hearing and continuance.—Extract from the minutes, April term,* 1878.

NEW ORLEANS, *Monday, May 20th,* 1878.

Court met pursuant to adjournment.
Present, Hon. Edward C. Billings, district judge.

MARY ANN FISK
vs.
CLAY GREEN ET ALS. } No. 8156.

This cause was called for trial—Hornor & Benedict for plaintiff, W. B. Lancaster and Thos. J. Semmes for defendants—when it appearing that this cause is properly an equity cause, it is ordered that the same be transferred from the law to the equity side of the court, and treated as a chancery suit; and thereupon, after hearing evidence, the cause was continued till Monday the 27th May, instant, at 11 a. m.

345 *Hearing and continuance.—Extract from the minutes of May 27th,* 1878.

MARY ANN FISK
vs.
CLAY GREEN ET ALS. } No. 8156.

By consent of counsel the cause is continued to the 3d day of June, 1878, at 11 a. m.

346 *Testimony on behalf of plaintiff.—Filed June 3d,* 1878.

MARY ANN FISK
vs.
CLAY GREEN ET AL. } No. 8156.

MILTON BENNER sworn on behalf of plaintiff.

By Mr. BENEDICT:

Q. Mr. Benner, you were acquainted with the late F. M. Fisk, were you not?
A. Yes, sir.
Q. Were you engaged in business with him in any way?
A. I was his agent for a number of years.
Q. Can you, from recollection, state between what years?
A. From, I think, 1870, until his death.
Q. Do you remember when he left the city of New Orleans for New York?
A. I remember, yes, sir, about the time.
Q. Either 70 or 71?
A. I could not tell.
Q. Do you know his object in going to New York?
A. I don't know; it was stated——
Q. What did he state to you was his object?
A. He himself did not state anything at the time, but I heard
347 from him afterwards and from others at the time that his object was to go into bankruptcy, and he went to New York to acquire a residence.
Q. It was to acquire a residence to go into bankruptcy?

A. Yes, sir.

Q. What was his object in going into bankruptcy there?

A. I don't know how I acquired my knowledge, and consequently it is difficult for me to answer the question direct.

Q. Do you know that at the time he left, his wife had obtained judgments against him for alimony in the sixth district court?

A. Yes, sir, very well.

Q. Did that cause him any inconvenience?

A A great deal.

Q. Was he not imprisoned several times for non-payment of the alimony?

A. He was.

Q. Did he leave the city and go to Pass Christian to avoid arrest for that purpose?

A. I believe so.

348, 349 Q. Did he on or about that time transfer to you, or did you purchase, any real estate of his?

A. I did subsequently after his departure.

Q. Can you state in what action it was purchased?

A. At the suit of Davidson Hill.

Q. Do you remember the price of the purchase?

A. $5,500.

Q. He furnished the funds for that purchase?

A. He did indirectly.

Q. It was refunded to you by him?

A. Yes, sir.

Q. What disposition did you subsequently make of that property?

A. I transferred it to——

Q. Clay Green or C. W. Goddard?

A. C. W. Goddard, of New York.

Q. Did he pay you anything for it?

A. Goddard?

Q. It was transferred by you, inasmuch as you were not the owner?

A. Exactly.

Q. Do you know whether that property was transferred afterwards to Clay Green?

A. I don't know.

350 Q. During the time you were agent of Mr. Fisk, did you keep an account of that property that had been purchased by you separate from his ordinary account?

A. No, sir.

Q. Did you keep an account of the rents and revenues of that property?

A. Yes, sir.

Q. You accounted for those to Mr. Goddard or Mr. Washburne?

A. Well, for a time I accounted for them to Mr. Fisk; after rendering him an account, it did not suit him, and he returned it, and desired it divided into two accounts, one as agent for the assignee, and the other as his agent.

Q. You did so?

A. I did so.

Q. During the time that he was in bankruptcy in New York, did you receive a power of attorney to act as agent for the assignee hereof, Mr. Fisk?

A. Yes, sir.

Q. How long did you hold that power of attorney? I suppose until you were superseded?

A. Until I was superseded.

Q. Who superseded you?

351 A. Mr. Washburne—either W. W. or Chas. H.

Q. Do you know whether Mr. Washburne was in turn superseded by any one? If so, who?

A. No, sir; I was not——

Q. Do you not know that Mr. Fisk subsequently became the agent of the assignee here?

A. He showed me a power of attorney he held, and he acted under it until, I believe, his death.

Q. But he held a power of attorney from the assignee?

A. Yes, sir.

Q. F. M. Fisk?

A. Yes, sir.

Q. While this real estate was held by you for account of F. M. Fisk, did you pay the insurance and taxes on it?

A. Yes, sir.

Q. And accounted for the same out of the revenues, I suppose?

A. Or other property.

Q. Were you a creditor of F. M. Fisk at the date he went into bankruptcy?

A. No, sir.

Q. You did not prove any claim in bankruptcy against him?

A. No, sir.

352 The foregoing testimony is taken subject to all exceptions raised at the trial of the cause.

(Signed) M. BENNER.

Sworn to and subscribed before the undersigned, a commissioner of the circuit courts, duly appointed and sworn by the circuit court of the United States in and for the district of Louisiana, at New Orleans, as witness my hand and seal at New Orleans this May 21st, 1878.

(Signed) ANDREW HERO, JR.,
Commissioner of Circuit Court.

W. W. WASHBURNE sworn on behalf of plaintiff.

By Mr. BENEDICT:

Q. Mr. Washburne, you have been a resident of this city for many years?

A. Yes, sir.

Q. Well acquainted with the late Francis M. Fisk?

A. Yes, sir.

Q. Did you know Charles H. Washburne?

A. Yes, sir.

Q. Do you know Charles W. Goddard, of New York?

A. I do.

353 Q. Do you know whether he was the agent of F. M. Fisk?

A. He was.

Q. Was Charles W. Goddard connected in any way with that bankruptcy? If so, how?

A. He was the agent.

Q. Of the assignee?

A. Of the assignee.

Q. Do you know how he came to be appointed—at whose request?
A. Through the resignation of Mr. Benner.
Q. At whose instance and by whom was his name suggested?
A. I don't remember; I might have suggested it; I don't know.
Q. Do you know whether or not Mrs. Green suggested his name?
A. I really cannot say; I think I suggested his name, perhaps, to Mr. Benner or to Mrs. Green; I am not positive.
Q. Mrs. Green at that time was the executrix of the succession of F. M. Fisk here in this city, was she not?
A. She was.
Q. You were her agent, representing her as executrix?
A. I was.

By Mr. SEMMES:

Q. When was this?
A. In 1874 or '75.

354 By Mr. BENEDICT:

Q. Do you know Mr. Richard Rhodes?
A. I do.
Q. Is he not the agent of Mrs. Green, as executrix?
A. He is the agent.
Q. You resigned your trust?
A. I resigned after the death of my brother.
Q. Did you have any funds on hand of Mrs. Green during the time you were her agent?
A. I did.
Q. Did you, on her order, at any time, give any money to Mr. Rhodes?
A. I did.
Q. Did you at one time give Mr. Rhodes $800? If so, for what purpose?
A. It was a balance I had on hand of her funds; she remitted me $2,000 from California, and when I resigned I turned over the balance to Mr. Rhodes.
Q. Do you know for what purpose Mr. Rhodes needed that $800?
A. No, sir.
Q. Do you know whether he was required to send it to New York or not?
355 A. I do not.
Q. Do you know a Mary Thompson?
A. Yes, sir.
Q. Do you know whether she presented a certain bill against him which was paid by you?
A. Mary Thompson. I think it was a note.
Q. Paid by you from the funds in your hands?
A. I do not know; I think it was out of the succession.
Q. Do you know anything about the transfer of the real estate No. 157 Camp street after Mr. Fisk's death—to whom it was transferred?
A. It was transferred, I think, to Mr. Weaver.
Q. Was anything in addition to that transferred to Mr. Weaver?
A. Mr. Weaver agreed to release Mr. Fisk by the transfer of all indebtedness.
Q. What other property in addition to that?
A. That he had a mortgage on.
Q. You mean that was transferred to Mr. Weaver?
A. None others. I don't think I have no recollection of any

356 other. He agreed to release Mr. Fisk if I would give him up the Camp street property from all indebtedness.

Q. Do you what the reputation of Mr. Fisk was as a man of means in 1867 and '68?

A. I always thought he had means.

Q. Was he not considered a rich man?

A. Yes, sir; I think he was; I considered him so; I don't know what others considered him, but I considered him in very good circumstances.

Q. Did you not at one time sign an appeal bond for him in the case of his wife's suit against him in the sixth district court for $7,500?

A. I think it was $8,000. Yes, sir; I was on his bond.

Q. Do you know whether or not after that judgment in that case for alimony that he gave a mortgage nominally in the name of Davidson and Hill for the purpose of preventing his wife collecting that alimony?

A. That I can't say. I believe there was such a mortgage, but I had no knowledge of it.

357, 358 Q. Do you know of the transfer of property subsequently under the mortgage by Mr. Fisk to Mr. Benner?

A. No. Yes, sir; I know there was a transfer, but I had no particular knowledge of it. I learned there was a transfer.

Q. Are you not at present on an appeal bond for Fisk in the case of Wheelas and Pratt?

A. Yes, sir.

Q. You were appointed agent, you say, of Mrs. Green, of San Francisco?

A. Yes, sir.

Q. Do you know Mr. Clay Green?

A. I do.

Q. What relationship does he bear towards Mrs. Ann E. Green?

A. Son.

Q. Do you know what the relations are between Mrs. Green and Mrs. Fisk, the plaintiff in this case, whether they are friendly or otherwise?

A. They are not friendly.

Q. And between the various heirs of the estate of F. M. Fisk?

A. Mrs. Green do you mean?

Q. Yes, sir.

A. She is not friendly with any.

359 Q. Do you know the time that Mr. Fisk left here for New York and what his object was in leaving here?

A. I don't know that I know fully.

Q. Did you have any conversations with Mr. Fisk on the subject either before or after he left for New York?

A. Yes, sir.

Q. Did he state to you what his object was in going to New York?

A. I believe it was to gain a residence.

Q. For what purpose?

A. To take the benefit of the bankrupt law.

Q. What object did he have in taking the benefit of the bankrupt act?

A. Well, he told me his object was to beat Mary Ann Goff.

Q. She was suing him for a divorce in the sixth district court?

A. Yes, sir.

Q. Do you know what the state of his circumstances pecuniarily at that time?

A. I don't think he owed much money.

Q. Do you know whether his property was able to pay in full
360 any and all indebtedness?

A. I think it was. I know it was as far as I had anything to do with it.

Q. Did you file accounts in the succession of F. M. Fisk in the second district court?

A. Yes, sir.

Q. Were you troubled at any time with creditors coming forward?

A. No, sir.

Q. You know the property that now stands in the name of Clay Green in this city?

A. Yes, sir.

Q. Can you give me an idea or an estimate of its value?

A. I don't think I can at the present time.

Q. What would you have estimated its value say in 1870 or '71?

A. I should think it was worth from fifteen to twenty-five thousand dollars. I can't tell.

Q. Do you know of the transfer of that property to the name of Mr. Benner, on which the Davidson and Hill mortgage rested?

A. I do not personally. I may have heard him speak of it, but I know nothing to my own knowledge.

361 Q. Do you know whether the money that paid for that property was or was not the money of Mr. Fisk?

A. Yes, sir; the money was Mr. Fisk's. I heard him say he had put it in Mr. Benner's name. I did not see him pay the money.

Q. Do you know anything of this sale, Mr. Washburne, of the assignee, Mr. Goddard, to Mr. Clay Green that was made in New York?

A. I only know that there was such a sale made.

Q. Do you know how it came to be made?

A. In what respect?

Q. Well, what preliminary arrangements had been made to have it so transferred?

A. It was a bankrupt sale.

Q. Had there been any arrangement made between Mrs. Green and Mr. Goddard by which he was to make that sale to Mr. Clay Green?

A. I don't that I have any knowledge particularly on that point. I might have heard the conversation.

362, 363 Q. At the time Mr. Fisk went into bankruptcy did he owe you any money?

A. Not really.

Q. Not really?

A. Did he place you on his schedule?

A. He did.

Q. Did you prove up any claim?

A. I don't think I did. I have no knowledge of it. I was on his bond in the Whelass and Pratt matter; but he placed in my hands collaterals, which since turned out to be worthless; not worthless, perhaps, but greatly depreciated.

Q. Have you any books or papers or documents of Mr. F. M. Fisk that would throw any light on his business transactions?

A. I have some account books which have always been in my possession.

Q. Letters, papers?

A. Yes, sir; letters and papers, but I don't think they would throw any light upon the subject.

Q. You have never examined them for that purpose, have you?

A. I have not.

Q. Do you know Mr. Fisk's writing?

364 A. Yes, sir.

Q. Will you look at this entry on page 99 of a book now produced and state whether that is in the handwriting of Mr. F. M. Fisk?

A. That is Mr. Fisk's handwriting.

Q. The item commences Mr. Benner. Will you turn to pages 36 and 37 and look at the entry made there? Is that in Mr. Fisk's handwriting?

A. That is that gentleman's writing.

Q. June 20th, 1871. William Grant. Is that in Mr. Fisk's handwriting?

A. Yes, sir; that looks like his handwriting. I think it is.

(Entries offered in evidence.)

Q. Do you know anything of the business relations existing between Mr. Fisk and A. G. Farwell & Co., of Boston?

A. I have some books and papers in relation to their affairs.

Q. Do you know whether their business connection was settled at any time?

A. I do not positively.

Q. Do you know who represented A. G. Farwell & Co. here in relation to their claim?

A. I think Mr. Grant represented them.

365 Q. Do you know whether or not Mr. Fisk was at the same time endeavoring to secure a settlement with Messrs. Farwell & Co. through the intervention of Mr. Grant, and whether or not Mr. Fisk and Mr. Grant were in correspondence?

A. I think that indebtedness arose through some cotton transactions, but I can't say positively in regard to that.

Q. Did Mr. Grant ever make a demand upon you for $2,000 in connection with that business?

A. I think he did. I think he offered to settle the matter for $2,000.

Q. That was subsequent to Mr. Fisk's death?

A. Yes, sir.

Q. Don't you know that there was a piece of property transferred by sheriff's sale to Mr. Farwell?

A. Yes, sir; I do know that; it is a long time since.

Q. Do you know who paid the money in that suit, for the costs and everything of that kind, of A. G. Farwell & Co. against F. M. Fisk?

A. I think he paid it. I could not swear positively. I did not

366 see him pay it, but I heard he was paying the costs.

Cross-examination by Mr. SEMMES:

Q. Mr. Washburne, you said this property was worth from fifteen to twenty-five thousand dollars?

A. Yes, sir; this real estate was.

Q. Was there any mortgages on it?

A. I don't think there was.

Q. On none of it?

A. None of any moment. I don't think there was any mortgage except what he held himself.

Q. Except what he held himself?

A. I think Mr. Fisk held them himself. I think there were placed in my possession to secure me on this bond.

By Mr. LANCASTER:

Q. What bond?

A. This alimony bond. I think I was on a bond of six or eight thousand dollars at the same time I was on this Wheeler and Pratt's bond.

Q. You held notes to secure it?

A. Yes, sir.

367 Q. And he put those notes on his schedule in bankruptcy?

A. Yes, sir.

By Mr. SEMMES:

Q. Who put the notes that you held as collaterals on his schedules?

A. He might have put the amounts. I was on his schedule for four or five thousand dollars, I am not positive; I don't remember the amount, but I am certain I was on his schedule; I did not know I was until I heard him say so.

By Mr. LANCASTER:

Q. You think you held notes up to the amount you were put on the schedules?

A. That was the intention, to secure myself on this bond.

Redirect examination by Mr. BENEDICT:

Q. Mr. Washburne, here is another entry on that book, on page 99. Did not Mr. Fisk send you a blank note in order that you might fill it out and prove it up against him?

A. I think he did.

Q. I see that he made an entry of it. Is that in his handwriting?

368 A. Yes, sir; $5,488.70.

Entry offered in evidence.

Counsel for plaintiff also offers in evidence the copy of the judgment of Mary A. Fisk vs. F. M. Fisk and certificate of recordation in the conveyance office, marked Exhibit 1.

Also, the certificate of the conveyance office of 6th of September, 1876, marked Exhibit 2.

Also, offers the notice to creditors in bankruptcy of F. M. Fisk, all except the pencil memoranda of the court, marked Exhibit 3.

Also, the certificate of mortgage of F. M. Fisk dated March 22d, 1873, marked Exhibit 4.

All of the foregoing testimony is taken subject to exceptions.

(Signed) W. W. WASHBURN.

Sworn to and subscribed before the undersigned, a commissioner of the circuit courts, duly appointed and sworn in and for the district
369 of Louisiana, at New Orleans, as witness my hand and seal at New Orleans this May 21, 1878.

[SEAL.] (Signed) ANDREW HERO, JR.,
Commissioner of Circuit Court.

RICHARD RHODES sworn on behalf of plaintiff.

By Mr. BENEDICT:

Q. Mr. Rhodes, you are a resident of this city?

A. Yes, sir.

Q. Are you acting in any capacity for Mrs. Green, the executrix of the late F. M. Fisk?

A. I am acting as agent of Mr. Clay Green. I don't know that I am acting in any capacity now for Mrs. Green. I have been acting as agent for Mrs. Green.

Q. Have you given up your agency of Mrs. Green as executrix?

A. No, I have not; but there has been nothing to do lately.

Q. While you were acting for Mrs. Green as executrix, did you have any business connection with C. W. Goddard, the attorney of F. M. Fisk, in New York?

A. No further than answering enquiries about bankruptcy
370 estate of F. M. Fisk, through W. B. Lancaster, att'y.

Q. Did you have any business transactions for Mr. C. W. Goddard in reference to Mr. Fisk's affairs?

A. Nothing, except when he wrote about bankruptcy affairs, I referred them to W. B. Lancaster, att'y.

Q. Were you in correspondence with Mr. Goddard?

A. He used to write to me, and I turned his letters over to Mr. Lancaster, because I did not know anything about the business he was inquiring about. It was something connected with his business that I referred entirely to Mr. Lancaster, and it passed entirely out of my mind.

Q. Did you receive from Mr. Washburne, for account of Mrs. Green, any money; and, if so, how much?

A. I don't know, I am sure. There was some money received; I believe it was sent on to New York; I think it was.

Q. To Mr. Goddard?

A. I really do not remember who it was sent to; but I believe it was sent to Mr. Goddard.

371 Q. Do you know for what purpose it was sent on?

A. I believe it was an account that was due Mr. Goddard, and I believe he gave it to me to be sent on there.

Q. You received it from Mr. Washburne, did you not?

A. I really cannot tell; but the money was sent on.

Q. Can you tell the time it was sent on?

A. No; I cannot.

Q. Would your books refresh your memory any?

A. I don't think they would, because it was a statement Mr. Washburne gave me. It was some transactions he had with Mr. Goddard himself, and I think that he said that as soon as he received a draft from Mr. Goddard on him he would send it to him. It was some transaction between Mr. Washburne and Mr. Goddard; I think it was, but I don't remember.

Q. Do you know in regard to what that amount arose?

A. No.

Q. Since what time have you been acting as the agent of Mrs. Green?

372 A. Well, there has been so little to do.

Q. What time did you commence?

A. I cannot tell; have not got the date.

Q. Has it been years? If so, how many?

Q. I think it might have been two years, or one year.

Q. And for Mr. Clay Green, how long have you been his agent?

A. I believe since I received the bill of sale—the sale out of sale from Mr. Clay Green—sold to him—bankrupt sale. I think it is probably eighteen months or two years, I think. I think it will be two years last April when the property was sold to him.

By Mr. SEMMES:

Q. Sold to who?

A. Mr. Green; he sent me the record of sale, and I immediately had it recorded in the courts here; it was in the conveyance office, or what-

ever you call it, and he sent me his power of att'y to act for him and to collect the rents of his property.

Q. Are you related to Mrs. Green or to Clay Green?

373 A. No.

Q. Or connected by marriage?

A. My wife is. Mrs. Green's husband was uncle to my wife.

Q. Do you know the relationship existing between Clay Green and Mrs. Ann E. Green? He is Mrs. Green's son, is he not?

A. Yes, sir; I believe Mr. Clay Green is her son.

Q. Do you know whether she and Clay Green are on terms of intimacy or otherwise?

A. I don't know anything about it at all.

Q. With Mrs. Mary A. Fisk?

A. I don't know anything at all about Mrs. Mary A. Fisk.

Q. Has Mrs. Green or Clay Green expressed themselves to you in relation to their feelings towards this family?

A. I don't know anything at all about it. I only know that I am acting as agent for Mr. C. W. Green; he sent me out his power of attorney, and asked me to please collect the rents and attend to this property here, and I told him I would.

374 Q. Has any creditor presented any claims to you since you have been receiving the revenues for him?

A. I believe there was some creditor, but I can't call to mind who they were. I generally referred them to Mr. Lancaster, because I did not know anything about them at all.

Q. You filed an account in the succession of Fisk, did you not?

A. Yes, sir.

Q. That account has been settled by judgment of court?

A. I think it has.

Q. I believe from information that one remittance to New York was $800, and that it was sent by you; can you recall it?

A. I can't remember that at all. There was only one remittance that was sent *to* on to Mr. Goddard, and that was a transaction, I believe, between Mr. Goddard and Mr. Washburne; it was a balance due Mr. Goddard, I believe, from Mr. Washburne, and I believe he desired it sent on through me. I was merely acting as a third party.

375 I do not know what it was for, but it was sent on.

Q. Mr. Washburne gave it to you for that purpose?

A. He did; yes, sir.

(Signed) R. RHODES.

Sworn to and subscribed before the undersigned, a commissioner of the circuit courts, duly appointed and sworn by the circuit court of the United States, in and for the district of Louisiana, at New Orleans, as witness my hand and seal, at New Orleans, this 21 May, 1878.

[SEAL.] (Signed) ANDREW HERO, JR.,
Commissioner of Circuit Court.

Mr. WASHBURNE recalled.

By Mr. BENEDICT:

Q. Mr. Washburne, there was some inquiry the other evening in this case relative to some money sent to Mr. Goddard, in New York, for Mrs. Green; can you recall the circumstances of that? If so, please state.

A. I did not send any money to Mr. Goddard.

Q. How was it sent; what was the amount, or what time was it sent?

376 A. I turned over what money I had of Mrs. Green's to Mr. Rhodes.

Q. For what purpose?

A. That was the balance I had in my hands.

Q. Why did you turn it over to Mr. Rhodes?

A. I don't know how to answer that question.

Q. This is a matter between man and man, before a court of justice in equity, and all we desire is to establish the facts.

A. I had then retired from the agency of Mrs. Green, and I had this money in my hands—$931 I think it was—and Mr. Goddard, of New York, had been writing to me to send it to him, and it was a letter that I received from Mr. Goddard, or one from Mrs. Green, to turn this money over to Mr. Rhodes.

Q. Did they state in their letters to you why it was to be sent to New York?

A. Mr. Goddard had written to me about this amount, claiming he had authority from Mrs. Green. The reason I hesitated in remitting that money was because I was on a bond. I understood the money
377 was to have been sent to Mr. Goddard for certain purposes, but I don't know what they were.

Q. What was that purpose, Mr. Washburne?

(Objected to.)

A. I understood the purpose to be for the purpose of purchasing the assets of the bankruptcy.

Q. This money that you turned over to Mr. Rhodes was part of $2,000 that Mrs. Green had remitted to you, was it not?

A. Yes, sir.

Q. When that remittance was first made, what was the object of it?

A. It was to settle a claim of Mr. Farwell that Mr. Grant had in his possession.

Q. Did Mr. Grant call upon you relative to that claim?

A. He either called or wrote me a note, I can't remember, demanding of me a settlement when I was the executor—agent of the executrix.

Q. And you made no settlement with him?

A. No settlement.

Q. No?

A. No; I believe I asked him to wait a certain time, and we
378 had the time postponed, and finally we refused to make any settlement with him.

Q. Did Mr. Grant threaten to institute a suit, if you did not pay that $2,000?

A. Yes, sir.

Q. Do you remember about the purchase of that property on which the Davidson and Hill mortgage rested?

A. On the levee?

Q. Yes, sir.

A. The match factory?

Q. Yes, sir.

A. Yes, sir.

Q. It was purchased by Benner?

A. Yes, sir.

Q. What check paid for it?

A. My check, the check of Mr. Benner and myself; we were in business together at that time.

Q. Was that money represented by that check refunded to you by any one; if so, who?

A. It was refunded the next day or the next day but one.
Q. By whom?
A. F. M. Fisk.
(Signed) W. W. WASHBURNE.

379 Sworn to and subscribed before me this 23d day of May, 1878.
[SEAL.] ANDREW HERO, JR.,
Commissioner of Circuit Court.

FRANCIS M. FISK, Jr., sworn on behalf of plaintiff.

By Mr. BENEDICT:

Q. How old are you, Mr. Fisk?
A. I am 35 years old this April last.
Q. 35?
A. Yes, sir.
Q. You are the son of F. M. Fisk, deceased?
A. Yes, sir.
Q. Do you know Clay Green?
A. Yes, sir.
Q. He is a son of Mrs. Ann E. Green?
A. Yes, sir; a son of Mrs. Ann E. Green.
Q. What relationship did he bear to the late F. M. Fisk?
A. Grandson.
Q. By former marriage of his grandfather?
A. Yes, sir.
Q. Your mother is the present plaintiff in this case?
380 A. Yes, sir.
Q. Did she institute any action against your father for divorce and seperation of property? If so, in what court?
A. Yes, sir; she did in the year 1868, in the sixth district court for this parish, parish of Orleans.
Q. Did she at any time in the progress of that suit take out an injunction to restrain him from disposing of the community property or placing mortgages upon it?
A. Yes, sir
Q. In what year was it?
A. That was on the 31st of March, 1869.
(Injunction offered in evidence marked .)
Q. Your mother obtained a judgment in that case?
A. Yes, sir.
Q. Of divorce and seperation of property?
A. Yes, sir.
Q. And half the community?
A. Yes, sir.
(Judgment offered in evidence, dated 22d June, 1871, No. 128, sixth district court, marked , transcribed on page 414.)
381 Q. After the injunction was sued out by your mother did your father make any transfers, or put any mortgages on his property?
A. Yes, sir; this injunction expressly stated it forbid him from alienating or disposing of any property, and he evaded that injunction by another process—a more insidious process—by mortgaging his property.
Q. Was he brought before the court for contempt?
A. Yes, sir; there was a rule taken before the sixth district court, Judge Cooley presiding, and on the trial of that rule it was shown that

the mortgages were on the property, but that he was the holder of the mortgage-notes himself, which he produced in court.

Q. Did he transfer any stock after that injunction?

A. Yes, sir; he transferred twenty shares of the Dry Dock to Mr. W. W. Washburne.

Q. And what did Mr. Washburne say concerning it?

A. Mr. Washburne testified there that Mr. Fisk was the owner of this stock.

382 Q. And that he, Washburne, had no interest in it?

A. Yes, sir.

Q. What was the valuation of the assessment of Mr. Fisk's property at the time that rule for contempt was taken?

A. $57,000.

Q. Was there a certificate of the board of assessors?

A. No, sir; I went to the City Hall and obtained a certificate from the comptroller of the City Hall at that time.

(Copy offered in evidence showing the assessment of Fisk's property in May, 1870, to be $57,000, marked .)

Q. Has there been any property sold subsequent to May, 1870—say, for instance, any property on Custom-house street?

A. Well, yes; the property at No. 182 Custom-house street.

Q. Was sold by who?

A. Was sold by my father as agent for Mrs. Ann Coney.

Q. Who was Ann Coney?

A. She was his mistress.

Q. How did the property happen to be in her name?

383 A. He put it in her name.

Q. It was sold for cash, was it not?

A. No, sir; one-third cash.

(Counsel for plaintiff offers in evidence the record in the case of Ann E. Green, testamentary executor, vs. Ann Coney, lately decided by the supreme court, together with the judgment of court therein.

Q. The price of the property was $5,500, was it not?

A. Of 182 Custom-house street and 117 Rampart street; they were bought at the one sale, one-third cash, and the balance in notes at one and two years. These notes were put in the Bank of America for collection. He discounted those notes and took them up.

Q. Was there any property subsequently transferred by Mr. Washburne, as the agent of the executrix, to Mr. Weaver; if so, what was the value of it?

A. A person had told me after my father's death, on asking him the value of 157 Camp st., which was one of the properties that he

384 transferred, that it was worth $12,000.

Q. What other property was transferred to Mr. Weaver?

A. The property 135 New Levee, and a three story brick store, and a shed adjoining.

Q. What was the value of those three properties?

A. Those properties were worth $6,000.

Q. These properties were transferred to Joseph D. Weaver?

A. The estate of Joseph D. Weaver.

Q. As settlement of mortgage-notes that he stated he held against F. M. Fisk?

A. They were transferred in settlement of a claim of $11,000; that is, of a mortgage existed on 135 New Levee street, of $3,333.33⅓, and of a vendor's note purchased by Weaver on 157 Camp street, for $7,000 or $7,500.

Q. After this property was transferred by Mr. Washburne to Mr. Weaver, were there any other debts of F. M. Fisk, in the city of New Orleans, to your knowledge?

A. No, sir; I don't know of any.

Q. What was the condition of your father's estate in 1868, '69,
385 & '70; was he solvent or insolvent?

A. He was solvent.

Q. From your knowledge of his assets and property was he able to pay his debts?

A. Yes, sir; he held securities enough to pay them and more than pay them.

Q. Did he have cash on hand to any extent, and, if so, how much was deposited in bank?

A. In 1868, he had $20,000 deposited in the Bank of America, in 1868 in one bank; besides he kept another account in the Germania National Bank; the amount of course I don't know, but my attention was particularly called to that amount deposited in that bank, because it was the only deposit he made in that bank.

Q. Did your mother in the course of her proceedings against your father get a judgment for alimony, and, if so, how much a month was it?

A. $2,000.

Q. $2,000 a month?

A. Yes, sir.

Q. Did your mother afterwards make any mortgage for the
386 purpose of settling that alimony, and, if so, in whose name?

A. He would not make a mortgage in favor of my mother, because he supposed that it might affect his rights in the determination of this suit, but he made one in favor of J. Davidson Hill, to secure her the amount of alimony which *which* was due her, which was $3,600 at that time.

Q. How much did he make the mortgage for?

A. He made the mortgage for $5,000.

Q. Was that mortgage note paid by him, or how was it settled? It was foreclosed, was it not?

A. It was foreclosed at the end of the year.

Q. It was not paid by him?

A. No, sir.

Q. When it was foreclosed who brought in the property?

A. Milton Benner.

Q. Is that the same property that Milton Benner and Mr. Washburne have testified to as having been paid for with money of F. M. Fisk?

A. Yes, sir; I was present at the sale, and saw Mr. Benner buy it in.

387 Q. Subsequent to that time did your mother issue execution again for alimony?

A. For $6,000, I think.

Q. Was your father arrested in any of those executions for alimony?

A. Yes, sir; arrested for contempt.

Q. Was he confined?

A. Yes, sir; in the parish prison for ten days.

By Mr. LANCASTER:

Q. Several times?

A. I think once or twice.

By Mr. BENEDICT:

Q. Did he seek to avoid the payment of alimony by leaving the city, and if so where did he go?

A. He went into the State of Mississippi.

Q. Where at?

A. Pass Christian.

Q. How long did he remain at Pass Christian before he left there for New York; about what time?

A. He remained there I think up to the 1st or 2d of August.

Q. In 1871?

A. Yes, sir.

Q. He then went to New York?

A. He went first to Louisville.

Q. To Louisville?

388 A. Yes, sir; and remained there some time with George Sutton, and then went to New York.

Q. When he went to New York, what did he do? Did he take any judicial step?

A. He asked to be adjudicated a bankrupt.

Q. He went into bankruptcy there?

A. Yes, sir.

Q. Did that step of his in going into bankruptcy have anything to do in connectton with your mother's actions against him?

A. Yes, sir; it had all to do with it. He certainly would not have taken the benefit of that act if it had not been for her suit.

Q. Did he tell you so?

A. Yes, sir.

Q. Then it was for the purpose of evading further pursuit from your mother that he took that step?

A. Yes, sir; and he subsequently told me that he was very sorry that he had not taken the benefit of the bankrupt act before he did, because it would have saved him paying the alimony which he had pre-

389 viously paid under that execution of Davidson Hill.

Q. Before he left New Orleans, did he make any shipment to George Sutton; and, if so, what?

A. He shipped goods. He had a lot of goods there in the warehouse, 135 New Levee street, woolen cloth and various kinds of merchandize of every description, I suppose to the value of five or six thousand dollars.

Q. Did he ship them to George Sutton?

A. He shipped them to George Sutton, I suppose, all of them.

Q. Did George Sutton ever account for the sales of them?

A. No, sir; never has in fact. My father told me in the year 1874 that George Sutton owed him a large amount of money for those very identical things, which he had shipped him to be sold on commission for him.

Q. In the assets surrendered by your father in bankruptcy, did he surrender that property that is standing in the name of Milton Benner?

A. The match factory?

Q. Yes.

A. No, sir.

Q. Did he surrender that standing in the name of Ann Coney?

390 A. No, sir.

Q. Did he have any insurance on his property in this city in the year 1872? If so, in what company and in whose name?

A. Well, some of the property was. Some of the insurance bills were made out in the name of Charles W. Goddard, assignee, and others in the name of Milton Benner. My father paid those insurance bills himself. You will find two of the bills among the papers there. One of the receipts says, "Received the within amount from F. M. Fisk."

Q. Did your father hold a power of attorney from Chas. W. Goddard, assignee?

A. Yes, sir. In the month of July, 1874, he received a power from Goddard, which he showed me; but it appears that one of the witnesses to that power of attorney was the daughter of Charles W. Goddard, name Lilly Goddard, and, of course, under the laws of this State a woman.

Q. Well.

391 A. And he had to send that act back and get another, which he did, and he received the other, I suppose, in 1874—some time in 1874.

Q. So that your father represented his own estate?

A. My father was the assignee, to tell the truth—general assignee. He managed the whole business. All Mr. Goddard had to do in the premises was to obey his orders, and Mr. Benner had to do the same.

Q. Do you know whether your father was indebted to George Sutton at the time your father went into bankruptcy?

A. Well, no, sir. George Sutton claimed that he was indebted to him for raising two children—the children of William H. Fisk, the brother of Mrs. A. E. Green; but my father, since the year 1858, always remitted a certain amount of money to support them.

Q. Do you know the handwriting and signature of George Sutton?

A. Yes, sir.

Q. Is that his handwriting and signature?

(Witness handed paper.)

392 A. Yes, sir.

Q. Is that your father's endorsement on the back of it?

(Offered in evidence, marked 8.)

A. Yes, sir.

Q. Do you know the Gleason Manufacturing Company of New York? Do you know whether your father was indebted to them or not?

A. Well, no, sir; we had a due bill showing the contrary, that they are indebted to us.

Q. Have you that due bill?

A. Yes, sir.

(Due bill offered in evidence of the Gleason Manufactory Co. to F. M. Fisk, marked 7.)

Q. Have any claims been proved up against your father's estate in the city of New Orleans since his death to the various accounts that have been rendered in his succession?

A. There was nothing but a doctor's bill of twenty-odd dollars, which was set aside.

Q. No other creditors have appeared or asserted any other liens or claims?

393 A. No, sir.

Q. Have you assisted since the death of your father in endeavoring to bring to light his various properties in various places?

A. Yes, sir.

No cross-examination.

(Signed) FRANCIS M. FISK.

Sworn to and subscribed before me this 23d day of May, 1878.
(Signed) ANDREW HERO, JR.,
Commissioner of Circuit Court.

WILLIAM GRANT sworn on behalf of defendant.

By Mr. LANCASTER:

Q. I wish you would make a statement, Major, about a judgment you obtained in the fifth district court, for a house on Boston, Farewell & Co.

A. What do you want to know about it?

Q. The amount of the judgment and the date of the origin of the cause of action.

A. I was attorney in that suit prior to the rendition of the
394 judgment, but I was attorney in proceedings where that judgment was at issue and the judgment was based on the account of which I have a copy here.

Q. Dating back to——

A. Dating back to 1867.

By Mr. SEMMES:

Q. It was in '70?

A. That was a statement of the account at the time the suit was brought; the other accounts will show for themselves. There was a deduction made, as I understand, by my clients taking off something less than the account shows was due at the time the suit was brought.

(Accounts filed in evidence as a part of the witness's testimony, marked .)

Q. You say a judgment was taken for something less than the account?

A. Yes, sir; the record shows the amount for which the judgment was taken.

Q. But the record is missing?

A. The decretal order of the court shows the exact amount.
395 $15,785 is the amount. There was some dispute as to discount and interest and one thing and another; it was adjusted at that.

Cross-examination by Mr. BENEDICT:

Q. Mr. Grant, when was that judgment disposed of subsequently?

A. I never heard of its having been disposed of.

Q. In no way?

A. No, sir.

Q. Nothing ever done with the case since the judgment?

A. Oh, yes. There has been exceptions since that. The record will show that.

Q. But we have not the record?

A. Well, then an execution was taken out and a seizure was made.

Q. Of what?

A. I don't know of what; some real estate, and that was enjoined and never perfected afterwards. A specific piece of property was seized and sold for some few dollars over and above the mortgage that was outstanding against it, which would give some little credit on the
396 judgment. I don't know how much.

Q. Who paid the costs in that case of Farwell vs. Fisk?

A. I don't know.

Q. Did not Mr. Fisk pay them?

A. I don't know. I will say, in addition to that, that all costs incurred

after I became connected with the case and before and after these several seizures, were paid by Farwell & Co. to my knowledge, because I paid them myself.

Q. Did you not receive from F. M. Fisk at various times various amounts to pay costs with in that case?

A. No, sir.

Q. At no time?

A. No, sir.

Q. Did you ever send to Mr. Washburne to get any money on that case, say the sum of $2,000; and, if so, why?

A. I offered to sell the judgment in that case to Mr. Washburne for $2,000, but he never took it.

Q. Do you know whether Mr. Farwell and Mr. Fisk settled that judgment?

A. I know they did not settle it.

397 Q. Do you know whether that judgment was proved up against F. M. Fisk in bankruptcy in New York?

A. It was, and it was afterwards withdrawn by leave of court; there was error in the proof, and the proof was withdrawn by leave of court.

Q. Was there a mortgage on that property, 22 Natchez st., that was paid under the plaintiff's execution? If so, in whose favor was the mortgage?

A. There was a mortgage on the property for $8,000 at the time it was bought in. That was in favor of F. G. Fisk, a son of F. M. Fisk; it dated back to 1842. Farwell & Co. purchased the mortgage.

Q. For how much?

A. I think it was about $1,700. I am not sure.

Q. Who paid the money for that mortgage?

A. Farwell & Co.

Q. It was refunded to them by Mr. Fisk?

A. No, sir.

Q. Was the purchase made at the instance of Mr. F. M. Fisk?

A. No, sir.

398 Q. Here are two accounts of A. G. Farwell and Company to William Grant, attorney. Will you please look at them, and state whether they are correct?

(Witness handed papers.)

A. I don't know whether they are or not.

Q. Mr. Grant, here are three letters, I think, of yours, dated July 24th, 1871, August 5th, 1871, and October 21st, 1871. Are those in your handwriting, and were they sent to Mr. F. M. Fisk, deceased?

(Witness handed documents.)

A. Those are in my handwriting. I presume they were sent. I don't know.

(Letters offered in evidence, marked Exhibit 6.)

Q. Mr. Grant, you are acquainted with the handwriting and signature of A. G. Farwell & Co? Will you please look over the bunch of letters now shown you, and say whether those are in the handwriting and signature of that firm?

(Witness handed papers.)

A. Well, that looks to me like their signatures.

399 Q. And the writing?

A. Yes, sir.

Q. Would you accept it as such?

A. I don't know. The writing is not peculiar; it is a commercial hand; if it was written to me, I should take it as their writing.

Q. But your doubt arises from a doubt concerning writing in general?

A. No; from the fact that I have never seen them write.

Q. Your knowledge of their handwriting is derived from your correspondence with them?

A. Yes, sir; it has a general resemblance to it.

Q. Will you look at those two accounts which I first showed you, and state whether they are not in the same handwriting as the letters now shown you?

A. I should judge they are.

Q. Being shown copy of letter dated November 8th, 1871, he is asked whether he can recall the facts stated therein as having been written by him to Mr. F. M. Fisk?

A. Well, I really can't say whether I ever wrote this letter or not; it is a good many years ago, and I write a great many letters.

400 Q. Do you whether Mr. Fisk, in that case of Farwell vs. Fisk, bought the furniture in the house on Natchez street, and paid a hundred dollars for it?

A. Whether who did?

Q. F. M. Fisk.

A. He did not buy it from me. I bought the whole of it for three hundred and some odd dollars at sherif's sale, and I have had possession of it as agent for Farwell ever since. I am renting it out now.

Q. Was not the judgment in the case of Farwell vs. Fisk a confessed judgment?

A. I don't know, unless the record shows it. I think you will find the decretal part of the judgment shows something of that kind, but the interrogatories were propounded under the law of Louisiana, and it was under those interrogatories the judgment was taken—the answers to those interrogatories.

Q. Do you know the handwriting of F. M. Fisk and his signature?

A. Yes, sir.

401 Q. Will you look at the entry on page 26, June 20th, 1871, reading, "William Grant, to cash paid you this day on account furniture 22 Natchez street, sold by sheriff, one hundred dollars ($100)," and state whether that is in the handwriting of F. *F.* M. Fisk?

A. I believe it does look like it.

Q. Do you remember the transaction?

A. I don't recollect the payment of that money. I do recollect that he paid me a hundred dollars on account of the judgment, which I applied to costs.

Q. It was a hundred dollars paid you to date on account of the judgment?

A. Yes.

Q. Did you give him the furniture or any part of it?

A. Well, I am not sure. It may be, Mr. Benedict, that he did that for a part of the furniture; my recollection is not distinct; there may have been a safe and some things in there, and he paid this money for the privilege of taking them away, but I don't recollect. I gave credit to Fisk for that amount, whatever it is.

402 Q. Did you make any agreement with Mr. Ogden who was representing Mrs. Mary A. Fisk, and who enjoined the sale of the real estate in the case of Farwell vs. Fisk, concerning the disposition of those two notes; and, if so, what was it?

By Mr. SEMMES:

Q. Was it in writing?

A. It was in writing. If it is on the record, I don't know about it; I supposed that it was in the record.

By Mr. BENEDICT:

Q. Do you remember, then, what the agreement was?

A. My recollection, Mr. Benedict, was that Mrs. Goff, presently Mary A. Fisk, was to dismiss all opposition to the execution of that judgment so far as to permit a seizure and sale at 22 Natchez street; that she was to pay all costs that were incurred, and that Fisk was to have bid in the property in satisfaction of that judgment. I may say in connection with that, that she has not complied with her undertaking. I understood she has not paid the costs. I paid them, in fact, myself.

403 Q. Do you remember how much they were?

A. I don't recollect.

Q. On page 28 of the cash book of Mr. Fisk, under date of July 17th, 1871, is this entry: "William B. Morris, credited by my own order in favor of William Grant, esq., for G. purchase $660." Do you remember receiving such an amount ($660) from F. M. Fisk, towards repaying the purchase price of that property, 22 Natchez st.?

A. I recollect receiving $600. I don't recollect, though, that it was on account of that purchase.

Q. You have no recollection of what it was for?

A. I recollect it was on account of the judgment generally. Mr. Grant might have in his own mind considered that it went a certain way, but there was no agreement on my part that I can recollect of.

Q. Will you look at the account between yourself and A. G. Farwell and Company, and state whether you don't find that you made the *the* cash payment to F. G. Fisk on account of your purchase of his

404 mortgage on 22 Natchez street, amounting to $1,600; and also paid the sheriff $160 on account of the sale of the furniture, making $760, on the 1st of July, 1871, and whether those two sums were not refunded to you by F. M. Fisk on the same day?

A. Mr. Benedict, I would state generally that this account here is an account which I rendered of the sale of the property there, and it was intended to be a cost account. I charged him with all disbursements of what I understood to be costs, and I credited him for costs with whatever I had received. That is the cost account, properly speaking.

Q. Have you a letter-press copy of that account?

A. I have, but without permission from my client, I should not divulge his private account.

Q. You have a letter-press copy of this account which was sent to F. M. Fisk, as I am informed, and I desire to verify this one by it.

A. Without his permission, Mr. Benedict, I should not do so. I

405 have no permission from him to do so. If you can show that permission I will give it cheerfully. It is a matter of my own account with my client—a business transaction.

Q. You kept a letter-press copy of this account and forwarded it to Mr. Fisk?

A. It was sent, but without their permission. I will not divulge their business with me. You see yourself the impropriety of my divulging my clients' business without their consent. If they gave it to you it is all right.

(Offered in evidence subject to all exceptions.)

Q. Mr. Grant, I find one of those letters you have written to Mr. Fisk

addressed to Mr. Fisk, October 27th, 1871; where was Mr. Fisk at that time?

A. I can't tell where he was.

Q. Now, here is another one, August 5th, 1871; where was Mr. Fisk then?

A. Well, he was at Pass Christian.

Q. At Pass Christian?

A. Yes.

Q. Did he shortly after that time go on to the North?

406 A. He went on to the North some time during the summer of 1871. He had been there previously, and he was stopping at the Pass, understood temporarily.

Q. Had you known Mr. Fisk to have been a resident here for many years preceeding that?

A. I never knew Mr. Fisk until along in the winter of '71; the winter or spring of '71. Long died in '70, and during that following winter I took charge of his business.

Redirect examination by Mr. LANCASTER:

Q. Major, did you not have charge of that Farwell case before you knew Mr. Fisk?

A. Yes, sir; I was employed before I knew.

Q. What was the cause of your getting acquainted with him?

A. I was employed directly by Farwell; I did not know Fisk.

Q. In looking after that business you got acquainted with him?

A. Yes.

Q. Were you not employed by Mr. Fisk in one of his habeas corpus cases?

407 A. I don't think I was. He used to talk to me about those habeas corpus cases. I may have talked about it, but I don't think I ever appeared in court.

By Mr. SEMMES:

Q. Let. October 27, 1871.

"I am willing and anxious to help you all I can, and serve my client at the same time, as is my duty, but I cannot see how your going into bankruptcy will help you. Cooley made a seizure of the revenues of the property which I had not seized, intending to give you the chance of drawing them yourself. This would have worked well enough but for the injunction which prevented a sale." Why was it that you were called on to use such language as that towards Mr. Fisk? What were the relations between you which justified you. You seem to be tasking him about it?

A. Well, Mr. Fisk seemed anxious that Farwell and Company should get their money; he said he owed it to them honestly and it ought

408 to be paid in preference to the others, and he evinced a friendly disposition towards them, doing all in his power to assist them in collecting their judgment, and he asked me about that time whether he had not better go into bankruptcy. I could not see that it would benefit Farwell and Company for him to go into bankruptcy, and the result was that he did not go into bankruptcy at that time. It was supposed that the property was ample to pay the amount of Farwell & Co.'s judgment, if a sale could be made, and the only difficulty which I anticipated was opposition to the execution by Mrs. Fisk. I very naturally, when I found Mr. Fisk willing to assist me, used him to the utmost extent.

By Mr. LANCASTER:

Q. You did it to collect the claim?

A. I endeavored to collect the full amount of the claim; at one time we were willing to have taken fifty cents on the dollar, but Mr.
409 Fisk never could raise the money, and much of this correspondence was to that effect. The proposition was to redeem this property by paying this judgment, which he could have done by paying fifty cents on the dollar in cash, but he never was able to do it.

Q. Did that question originate with Farwell and Co. or Mr. Fisk, that fifty per cent.?

A. Well, it was a matter originating with them. He was constantly applying to them for some recognition. He said that he had been treated very badly and had lost a great deal, and did not think he ought to pay the whole amount, and they finally told him they would take fifty per cent. for the judgment, but he never was able to do it.

By Mr. BENEDICT:

Q. Mr. Grant, in relation to that subject you have just spoken of, that settlement, was not a demand made by you at one time on Mr. Washburne for $2,000, for some other purpose than that of compromising that judgment?

410 A. No, sir; I never made a demand on Washburne for a cent. I agreed to sell to Mrs. Green, the executrix, or to Charles Green, or to somebody that I supposed were represented by Washburne, the balance of this judgment for $2,000, and Mr. Washburne said they would take it, but he never was able to come up with the money—never has to this day.

Entry No. 1, offered in connection with with *Washburne's testimony.—Extract from book.*

August 17, 1874.

M. Benner, dr., to A. Black.

Note sent you Feb'ry 5, 1872, to be filled up for $10,000. No acc't.

Entry No. 2, offered in connection with Mr. Washburne's testimony.—Extract from book.

Milton Benner, N. O., cr.

May 6, 1872, by cash received this day on ac't..... $500 00

411 *Entry No. 3, offered in connection with Mr. Washburne's testimony.—Extract from book.*

Aug. 17, 1874.

W. W. Washburne to Blank.

Note sent you to be filled up for $5,488.70. Feb'ry 5, 1872.

Entry No. 4, offered in connection with Mr. Washburne's testimony.—Extract from book.

Wm. Grant, dr.

June 20, 1871, to cash paid you this day on account..... .... $100 00

Furniture, 22 Natchez st., sold by sheriff.

Note No. 8, offered in connection with Mr. F. M. Fisk, jr.

Twelve months after date I promise to pay F. M. Fisk or order two thousand dollars for value received with interest from date, this April 21st, 1870.

$2,000.

(Signed) GEO. SUTTON.

(Across the face:) Mortgages are given to secure the payment of this note and stamped.

(Endorsed:) F. M. Fisk.

412 *Due bill of Gleason Manufacturing Co. ℳ 7, offered in connection with the testimony of F. M. Fisk.*

[E. P. Gleason M'f't'g Co., m'n'f't'rs of gas-burners, cor. Mercer and Houston streets.]

NEW YORK, *Oct. 7th*, 1874.

Due F. M. Fisk on demand merchandise to the amount of $23.00.

(Si'g) GLEASON M'N'F'T'G CO.
GRANGER.

Writ of injunction referred to in and made part of testimony of F. M. Fisk, jr.

STATE OF LOUISIANA:

Sixth district court for the parish of Orleans.

Writ of injunction.

MARY ANN FISK
vs.
HER HUSBAND, F. M. FISK. } No. 128.

The State of Louisiana to F. M. Fisk, New Orleans, greeting:

You are hereby commanded, enjoined, and restrained in the
413 name of the State of Louisiana and of the sixth district court for the parish of Orleans from selling, alienating, or disposing of in any manner the property real or personal now in your possession, and acquired by you since the date of the marriage as alleged in the original petition in this case, viz, since the 27th day of June, 1842.

And herein fail not under the penalty of the law.

Witness the honorable William H. Cooley, judge of our said court, this 31st day of March, in the year of our Lord one thousand eight hundred and sixty-nine, and in the ninety-third year of the Independence of the United States.

[SEAL.] (Signed) WM. KOELPER, *Clerk.*

Sheriff's return.

Received March 31st, 1869; and on the first day of April, 1869, served a copy of the within writ of injunction personally on F. M. Fisk, defendant herein.

Returned same day.

(Signed) PHIL. LACOSTE,
D'y Sheriff.

414 *Final judgment in foregoing cause.*

THE STATE OF LOUISIANA:

Sixth district court, parish of Orleans.

MARY ANN FISK
vs.
HER HUSBAND, F. M. FISK.

In this case, by reason of the verdict of the jury, in favor of the plaintiff, her husband, F. M. Fisk, and by reason of the law and evidence being in her favor, it is ordered and adjudged and decreed that the plaintiff, Mary Ann Fisk, be divorced from her said husband, F. M. Fisk, and the bonds of matrimony between them be, and they are hereby, dissolved. And it is further ordered and adjudged and decreed that the plaintiff, Mary Ann Fisk, recover from her said husband one-half of all the property acquired by her said husband, and belonging to the community, since the 27th June, 1842, the date of their marriage, with the fruits and revenues thereof after the rendition of this judgment, and that defendant pay the costs of suit. Judgment
415 signed 27th June, 1871.

(Signed) W. H. COOLEY, *Judge.*

Copy showing assessment of F. M. Fisk's property in 1870, *and referred to and made part of the testimony of F. M. Fisk, jr.*

DEPARTMENT OF ASSESSMENT,
CITY HALL, ROOM NO. 15,
New Orleans, La., Aug'st 2d, 1879.

This is to certify that, according to the records of this office, Francis M. Fisk was assessed for real estate and personal property in the year 1870 in the following squares, as follows, viz:

Ass'm't dist.	No. of square.	Streets.	No. of lots.	Measurement.		Assessment.
3d	18	Fulton, Peters, Girod & Notre Dame	2 & 3	47 7/	120	$7,500
"	"	" " " " " "	8	23 9/	"	2,000
"	"	" " " " " "	9	24 10/	"	2,000
"	"	" Notre Dame, Girod & Peters	10	23 9	"	5,500
"	179	Camp st., Mary Girod & Julia	18	27	149	18,000
416						
"	179	Camp No. 157, Furniture				1,600
"	"	" " " Money at interest				1,000
5th	131	Tchoupitoulas, Magazine, Natchez & Gravier	17	24 8/	58	8,000
4th	574	Rocheblanc, Dorgenois, Poydras & Perdido	1	28	132	250

(Signed) CHAS. G. FLETCHER,
Chief Clerk.

417 In the testimony of Francis M. Fisk, jr., counsel for plaintiff offers in evidence the record in the case of Ann E. Green, testamentary executrix, vs. Ann Conery, lately decided by the supreme court.

Petition.—Filed January 27th, 1876.

MRS. ANNE ELIZABETH GREEN, TEST'Y EX'X, &C.,
vs.
MISS ANNA CONERY.

To the hon. the fourth district court for the parish of Orleans:

The petition of Mrs. Anne Elizabeth Green, testamentary executrix of the succession of F. M. Fisk, of New Orleans, but temporarily out of the State of Louisiana, and residing at San Francisco, State of California, but duly represented in the city of New Orleans by Wm. W. Washburn, esq., respectfully represents:

That Miss Anna Conery, who resides in this city, is indebted unto the succession of F. M. Fisk in the sum of eight thousand dollars ex-
418 clusive of interest and costs for this to wit, that the succession is holder and owner of two certain promissory notes made and subscribed by the said Anna Conery to her own order, and by herself endorsed for the sum of four thousand dollars, each dated at New Orleans, May 16th, 1870, and payable one year after date, with interest at the rate of 8 % per annum from date until paid, which said notes were not paid at maturity, and the said Anna Conery has neglected and now refuses to pay the same notwithstanding an amicable demand; that the payment of said notes in capital, interest, and costs, together with the attorney fees prosecuting this case, were secured by a special mortgage duly recorded at the mortgage office of the parish of Orleans, on the property described in the act of mortgage consented by the said Miss Anna Conery in favor of Mr. Thomas Dwyer, per act passed before Joseph Cavellier, notary public, in this city, but the said mortgage was partially cancelled on the property firstly described in said act, and *have* the payment of said *of said* notes in capital, interest, costs, to-
419 gether with the said attorney's fees as above said, is secured by special mortgage on the following described property, secondly described in said act, to wit, on a lot of ground situate in the second district of this city in the square bounded by Canal, Rampart, Custom-house and Burgundy streets, measuring thirty feet ten inches and five lines front on Burgundy street by sixty-three feet eleven inches and two lines in depth between parallel lines; the whole more or less, together with the buildings and improvements thereon, as it appears by the said notes and the said act of mortgage which are hereto annexed for reference and made part of this petition.

Your petitioner further represents that considering the confession of judgment in said act of mortgage contained the right given to the holder of said notes to resort to executory process to enforce the payment of the same, the renouncing the benefit of appraisement for the purpose of the sale of said property, and the clause of non aliendo, all clauses contained in said act of mortgage, she is hereby entitled to an order
420 of seizure and sale of said property to pay and satisfy the said claim as aforesaid.

Wherefore, the premises being considered, your petitioner prays the court to order the civil sheriff of the parish of Orleans to seize and sell for cash and without appraisement the aforesaid property described in the said act of mortgage, and this petition to pay and satisfy with mortgage lien the aforesaid sum of eight thousand dollars, with interest at the rate of 8% per annum from the 16th May, 1870, until paid, together with 5% on said amount for attorney's fees as fixed by the contract, and all the costs of suit, and petitioner prays that due notice of these proceed-

ings be given to the said Miss Anna Conery defendant, and for general relief.

(Signed) J. L. TISSOT,
Of Counsel.

Order.

Let executory process issue in this case as prayed for, and according to law.

Jan'y 27, 1876.

(Signed) B. L. LYNCH,
Judge.

Answer and opposition to executory process.—Filed March 24, 1876.

421 Fourth district court for the parish of Orleans.

MRS. ANNE ELIZABETH GREEN, TEST'Y EX. OF succession of F. M. Fisk,
vs.
MISS ANNA CONERY. } No. 43989.

Now, into court, comes Anna Conery, wife of James Reagan, defendant herein, who is duly authorized by said Reagan, her husband, who joins her in this suit, and for answer of the petition of plaintiff denies all and singular the allegations therein contained, except in so far as they may be hereafter admitted, and specially reserving to herself all rights of action for damages which she may now have or which may hereafter arise against the plaintiff, Mrs. Anne E. Green and William W. Washburn, her agent, in their representative characters, and individually in solido, for the wrongful and unlawful seizure of her property as described in said petition, now opposes the said seizure and sale herein obtained, for the following reasons, viz:

1st. Because the notes therein described and sued upon were
422 obtained by fraud, and were unlawfully taken from the possession of defendant by the said Anne E. Green and William W. Washburn, her agent, or by others who were employed by the said Mrs. Green and Washburn, to obtain the said notes, and after maturity of the same.

2d. Because there never was any consideration given for the said notes, and the said act of mortgage in favor of Thomas Dwyer, as described in the petition of plaintiff, was executed without any consideration from him or from any person for the same or for the notes therein secured, and now in the wrongful possession of plaintiff.

3d. Because the said notes and act of mortgage were drawn and executed for her own convenience and had never been out of her possession until the plaintiff herein or her agents acting for her obtained the same by fraud or by some other unlawful means.

4th. Because the said notes were stolen from the defendant, whose property they were and in whose possession they were, on or
423 about the 11th day of October, 1875, and if they are now in the possession of the plaintiff they have been obtained from some one who had stolen them or were thus wrongfully and unlawfully obtained by the plaintiff, or her agents, after maturity.

Wherefore, the premises considered, defendant prays that an injunction issue from this honorable court, directed to Eugene Waggaman,

civil sheriff of the parish of *the parish of* Orleans, and to Mrs. Anne Elizabeth Green, test'y ex'x of the succession of F. M. Fisk, through her agent, William W. Washburn, and to the said Washburn, ordering them to suspend the sale of the property herein seized and described in the petition of plaintiff, and enjoining them from proceeding any further with said sale, and that after due proceedings had the said order of seizure and sale be revoked, and plaintiff's demand be dismissed with costs, and for all general and equitable relief.

(Signed) C. McRAE SELPH,
Of Counsel for Def'ts.

Personally appeared before me the undersigned, Mrs. Anna
424 Conery, wife of James Reagan, the defendant herein, who being duly sworn, declares that the allegations of the foregoing answer and opposition to the executory process herein are true, and that the said notes were her property, were in her possession and were stolen from her, and were obtained by the plaintiff herein by fraud or by some other unlawful means.

her
ANNA + CONERY REAGAN.
mark.

Sworn to and subscribed before me, this 23d day March, 1876.
[SEAL.] (Signed) WM. H. HOLMES,
Second Justice of the Peace, Parish of Orleans.

I authorize my wife, Mrs. Anna Conery Reagan, to appear and defend this action and join her in the same.

(Signed) JAMES REGAN.

Let a writ of injunction issue herein according to law, and let Mrs. Anne E. Green, test'y ex'x of the succession of F. M. Fisk, through her agent, W. W. Washburn, and the said Washburn and Eugene
425 Waggaman, civil sheriff for the parish of Orleans, be enjoined from proceeding any further in the sale of the within described property until the further order of this court.

New Orleans, March 24, 1876.

(Signed) B. L. LYNCH,
Judge.

Sale of property.—Mrs. A. J. Da Silva to Miss Anna Conery.

STATE OF LOUISIANA:

Before me, Joseph Cuvillier, a notary public for the parish of Orleans and the city of New Orleans, therein residing, personally appeared Mrs. Ezilda Bel, widow of Mrs. Etienne Durand, now the wife of Antoine Joseph Da Silva, and by her said husband here present, both residing in this city: Which appearer declared that pursuant to the public sale, which she caused to be made on the fifteenth of January last, (1870,) by C. E. Girardey & Co., auctioneers, of this city, of the two properties hereinafter described, which were adjudicated to Mr. F. M. Fisk for account of Miss Anna Conery for the price of five thousand and fifty dollars in manner set forth in the process verbal of sale of said
426 auctioneer hereto annexed, she does by these presents sell, with all legal warranty, and with subrogation to her rights and actions of warranty against all preceeding vendors and other warrantors, unto the said Miss Anna Conery, also of this city, present and accepting:

1st. A lot of ground, situated in the second district of this city, in the square bounded by Canal, Rampart, Custom-House and Burgundy streets, having, English measure, thirty-two feet nine inches front on said Custom-House street by one hundred and sixty feet in depth, whole more or less, which measure is to be taken on the line of property of Joseph Kennedy, or assigns, and runs towards Burgundy street up to the line which divides the said lot from property of Peter Cunningham, or assigns, together with the buildings and other circumstances and dependencies to the said lot belonging.

2d. A lot of ground, situate in the same square as above, and measuring thirty feet ten inches and five lines front on Burgundy
427 street by sixty-three feet eleven inches two lines in depth, between parallel lines, the whole more or less, together with the buildings and improvements thereon.

The said two properties belong to the present vendor by means of the purchase she made thereof from Felix Labatut, per act dated November eighteenth, eighteen hundred and forty-seven, before Philip Lacoste, then a notary in this city, acting for Louis F. Caire, then another notary in this city, and the said properties have never been alienated by by the said Mrs. Da Silva since the purchase she made thereof, as appears by the hereunto annexed certificate from the register of conveyances for this city of even date herewith.

This sale is made for the total price of five thousand and fifty dollars for the one secondly described in deduction of which total sum the said Miss Conery has, in presence of the witness and notary undersigned, paid sixteen hundred and eighty-three dollars and thirty-three and one-third cents cash to the said Mrs. Da Silva, who acknowledged the receipt thereof, and grants acquittance therefor.

428 And for the balance of said total price, say three thousand three hundred and seventy-six dollars sixty-six and two-third cents, the said Miss Conery has furnished two promissory notes, drawn by her to her own order, and by her indorsed, for the sum of sixteen hundred and eighty-three dollars and thirty-three and one-third cents each, each dated January fifteenth, eighteen hundred and seventy, day of said adjudication, bearing eight per cent. interest per annum from date until paid, and payable respectively one and two years after date, at the domicil of the Bank of America, in this city, which notes signed ne varietur by me, notary, for identify herewith, were delivered to the said Mrs. Da Silva, authorized as aforesaid, who acknowledges thereof.

And in case it shall become necessary to institute legal proceedings for the recovery of the amount of the said notes, or of any part thereof, the said Miss Conery binds herself to pay the fees of the attorney-at-law who may be employed for that purpose, which fees are hereby
429 fixed at five per cent. on the amount sued for.

Now, therefore, in order to secure the punctual payment of said notes at maturity, together with interest and attorney's fees, the said Mrs. Da Silva reserves her privilege, and the said Miss Conery hereby mortgages and hypothecates the above-described properties in favor of the said Mrs. Da Silva and to enure to the use and benefit of all future holder or holders of the said notes, which is accepted by the said Mrs. Da Silva as actual holder thereof, the said Miss Conery binding herself not to alienate nor encumber the said properties to the prejudice of this act.

And the said Miss Conery, moreover, binds herself to keep the buildings on the said property constantly insured against loss by fire to an amount not less than one thousand dollars, and to transfer the policies

of insurance to the said Mrs. Da Silva until the full and final payment of the said notes, hereby consenting and agreeing that the said Mrs. Da Silva shall have the right to transfer such policies to any future
430 holder or holders of the said notes, and that in case of failure of the said Miss Conery to effect such insurance the holder or holders of the said notes shall have the right to do so, and the reimbursement of all sums paid for that purpose shall be secured by the present mortgage, but this clause shall not be construed as obligatory on such holder or holders, or as making them liable for any loss, damage or injury which may result for the non-insu'ance of the said buildings.

All the taxes on said property are paid up to 1868 inclusive; as to those for the year 1869 the purchaser binds herself to pay them when collectable.

By the hereunto annexed certificate of the recorder of mortgages for this city of even date herewith there is no other encumbrance standing in the name of the said Mrs. Da Silva and recorded against the above-described properties than the draining privilege. Which privilege the said Mrs. Da Silva authorized as aforesaid binds herself to have
431 erased and cancelled in the shortest possible delay.

Thus done and passed in my office on this tenth day of February, eighteen hundred and seventy, in presence of Theodule Buisson and George Grimault, competent witnesses residing in this city, who have signed these presents, together with the parties and me, notary, after a due reading of the whole.

(Original signed) E. DA SILVA.
A. J. DA SILVA.
ANNA CONERY.
JOSEPH CUVELLIER.

TH. BUISSON.
GEO. GRIMAULT,
Not. Pub.

A true copy from the original.
[SEAL.] (Signed) JOSEPH CUVELIER.

Procuration.

Miss Anna Conery to Francis M. Fisk.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

By this instruement of procuration be it known that on this ninth day of February, in the year of our Lord one thousand eight hundred
432 and seventy, and of *of* the Independence of the United States of America the ninety-fourth, before me, William Joseph Castell, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, personally came and appeared Miss Anna Conery of this city who declared the she had made and appointed, and does by these presents make, nominate, ordain, authorize, constitute and appoint, and in her place and stead depute and put Frances M. Fisk, also of this city, to be her true and lawful attorney in fact, general and special, giving, and by these presents granting, unto the said attorney full power and authority for her and in her name and behalf and to her use to conduct, manage, and transact all and singular her affairs, business and concerns, in and of whatever nature or kind without any exception or reservation whatsoever, to open all letters of correspond-

ence addressed to her and to answer the same, to make and endorse promissory notes in the name of constituent, and draw, endorse
433 and accept bills of exchange, to make checks, and draw money out of any bank or banks, wherein the same may have been deposited in the name or for account of constituent, to deposit drafts, bills of exchange, acceptances and promissory notes or other obligations for collection in any bank or banks, and withdraw the same or the amount thereof at pleasure by check, or otherwise to sell and transfer all or any shares of the capital stock of any bank or banks or other corporate body or bodies owned by constituent, and receive and receipt for the dividends due, or to become due thereon; to pledge and pawn all or any shares of the capital stock of any bank or banks, or other corporate body or bodies owned by the said constituent, to make and to give any note or notes which may be necessary from time to time for the renewal of the same, to attend all or any meetings of creditors, wherein the said constituent may be interested, and to vote in her name on all questions and cases that may be submitted to such meetings, to attend all or any
434 meetings of the stockholders of any bank or banks, or other corporate body or bodies wherein the said constituent may be interested, and vote in the name of constituent on all questions and cases that shall or may be submitted at such meeting, to borrow money from any bank or banks or other monied institution or institutions on the notes or obligations of the said constituent, drawn by her or by the said attorney or those of others, which shall or may come into the hands of *of* the said attorney for the use of the said constituent, and make other notes and obligations from time to time for the renewal of all such or any part or parts thereof, to sell, transfer and convey, or to mortgage and affect all or any part or parts of the real, personal or mixed estate of the said constituent, and to receive the price thereof, also to purchase real, personal, or mixed estate in the name of said constituent on such terms and conditions as the said attorney shall think fit, and to lease, let, or hire all or any part of the real estate belonging to said con-
435 stituent, and receive and receipt for the rent thereof, as the same shall fall due, and for the full execution of the purposes aforesaid, to make, sign and execute, in the name of the said constituent, all acts, whether of sale, mortgage, lease, release, contract, compromise, covenant, deed, agreement, or otherwise that shall or may be requisite or necessary, and bind the said constituent thereby as firmly as if the same were or had been constituent's own proper acts and deeds; to sign all bonds or other acts required by the revenue department at the custom-house of this district or elsewhere, and to do all the custom-house business whatsoever, to receive and attend to all shipments or consignments of produce, goods, wares or merchandise that shall or may be made to her either for her own account and risk, or that of others, and to pursue the instructions of the owners, shippers or others interested therein relative thereto, to receive and acknowledge notices of protest of all or of any bills, drafts or promissory notes, to which the said
436 constituent may be a party, and to act for the said constituent and be her substitute in all cases wherein she may be appointed the agent or attorney of others, and to ask, demand, have, take, and by all lawful ways and means to recover of and from all and every person and persons whomsoever, body or bodies corporate all and every such sum or sums of money, goods, debts, property and effects whatsoever, as now is or are, or may hereafter be, in his, her or their custody or possession, due, owing, coming or belonging to her the said constituent, whether by bond, bill, note, book, debt, account, consig'ment, bequest, or for and

by what other reason or means soever; and to that end with whom it may concern, to adjust and settle all accounts, and upon recovery and receipt in the premises to make and give good and sufficient discharges and acquittances; to appear before all courts of law and equity, there to do, prosecute, and defend, as occasion shall require, or to compromise, compound, and agree in the premises, by arbitration or otherwise,
437 as the said attorney shall, in his discretion, think fit; also to apply for and obtain all and any attachments, sequestrations, injunctions and appeals, and give the requisite security, and sign the necessary bonds.

(United States internal revenue stamp for one dollar affixed hereto, duly cancelled at the execution hereof.)

And generally to do and perform all and every other act, matter, and thing whatsoever as shall or may be requisite and necessary touching or concerning the affairs, business, and concerns of the said constitutent, as fully, amply, and effectually, and to all intents and purposes with the same validity, as if all and every such act, matter, or thing were or had been herein particularly stated and especially provided for, or as she the said constituent could or might do if personally present. Also with full power of substitution and revocation, and said constitutent hereby agrees to ratify and confirm all and whatsoever the said attorney shall lawfully do or cause to be done by virtue of this act of procuration.

438 Thus done and passed in my office at New Orleans aforesaid, the day, month, and year first above written, in the presence of Michael L. Luther, Laurence McCormack, witnesses of lawful age, domicilated in this city, who hereunto sign their names with said appearer, and me the said notary, after reading of these presents.

(Signed) ANNA CONERY.

LAURENCE MCCORMACK.

MICHAEL L. LUTHER.

W. J. CASTELL,
Not. Pub.

I certify the above and foregoing to be a true copy of the original act extant on my current register.

In faith whereof I grant these presents under my signature and the impress of my seal of office.

New Orleans, February 18th, 1870.

[SEAL.] (Signed) W. J. CASTELL,
Not. Pub.

[5c. int. rev. stamp affixed and cancelled.]

Mortgage.—Filed January 27th, 1876.

439 STATE OF LOUISIANA,
City of New Orleans:

Before me, Joseph Cuvellier, a notary public for the parish of Orleans and city of New Orleans, therein residing, personally appeared Miss Anna Conery, of the full age of majority, residing in this city, who declared and acknowledged that she is justly and truly indebted unto Mr. Thomas Dwyer, also of this city, in the full amount and sum of eight thousand dollars, lawful money, by the said Dwyer to the said appearer this day loaned and advanced, the receipt whereof is hereby acknowledged, and for the reimbursement of which the said Miss Anna Conery has made and subscribed two promissory notes, dated this day, to the

order of and endorsed by herself, for four thousand dollars each, bearing interest at eight per cent. per annum from date until paid, and payable at the Bank of America in this city, both one year after date, which notes after being marked ne varietur by me, notary, for indentity,
440 herewith were handed over to the said Dwyer, here present and acknowledging due receipt thereof.

And in case it shall become necessary to institute legal proceedings for the recovery of the amount of the said notes, or of any part thereof, the said Miss Anna Conery binds herself to pay the fees of the attorney at law who may be employed for that purpose, which fees are hereby fixed at five per cent. on the amount sued for.

Now, therefore, in order to secure the punctual payment of the said notes at maturity, together with all eventual interest and attorney's fees, the said Miss Anna Conery declared that she does by these presents, mortgage, effect, and specially hypothecate in favor of said Dwyer, and to enure to the use and benefit of any and all future holder or holders of the said notes, the said Dwyer being here present and accepting for himself or others, the following described property, to wit:

1st. A lot of ground situate in the second district of this city, in
441 the square bounded by Canal, Rampart, Custom-House and Burgundy streets, having English measure thirty-two feet nine inches front on said Custom House street, by one hundred and six feet in depth the whole, more or less; which measure is to be taken on the line of property of Joseph Kennedy or assigns, and runs towards Burgundy street up to the line which divides the said lot from property of Peter Cunningham or assigns; together with the buildings and other circumstances and dependencies to the said lot belonging.

2d. And a lot of ground in the same square as above, measuring thirty feet ten inches and five lines front on Burgundy street, by sixty-three feet eleven inches and two lines in depth between parallel lines; the whole more or less together with the buildings and improvements thereon.

Which properties belong to the said Miss Conery, for having acquired them by purchase from Mrs. Antoine Joseph Da Silva, per act of February 10th, 1870, in this office.

By the hereunto annexed certificate from the recorder of mort-
442 gages for this city under date of this day, there is no other incumbrance standing in the name of Miss Anna Conery and recorded against the above described properties than the mortgage she granted in favor Mrs. Da Silva her vendor, per her act of purchase above related, in this office, to secure three thousand three hundred and sixty-six dollars $\frac{66}{100}$ interest and costs.

It is hereby agreed between the parties that the present act shall bear confession of judgment in favor of any holder or holders of the said notes until final payment, the said Miss Anna Conery hereby binding herself and her heirs not to sell, alienate or encumber the said properties to the prejudice of this act.

And the said mortgagor further declared that in the event the said promissory notes not being paid punctually at maturity it shall be lawful for and she does hereby authorize the said mortgagee or any
443 holder or holders thereof to cause all and singular the property described and herein mortgaged to be seized and sold under executory process, issued by any competent court without appraisement, to the highest bidder, payable in cash; the said mortgagor hereby expressly dispensing with all and any appraisement thereof, and by these presents waiving and renouncing the benefit of appraisement, and of all

laws or parts of laws relative to the appraisement of properties seized and sold under executory or other legal process.

And the said mortgagor moreover binds herself to keep the buildings on the said property constantly insured against loss by fire to an amount not less than five thousand dollars, and to transfer the policies of insurance to the said mortgagee until the full and final payment of the said notes; hereby consenting and agreeing that the said mortgagee shall have the right to transfer such policies to any future holder or holders of the said notes; and that in case of failure of the said
444 mortgagor to effect such insurance, the holder or holders of the said notes shall have the right to do so, and the reimbursement of all sums for that purpose shall be secured by the present mortgage; but this cause shall not be construed as obligatory on such holder or holders, or as making them liable for any loss, damage or injury which may result from the non-insurance of the said buildings.

Thus done and passed at New Orleans in my office on this 16th day of May, 1870, in the presence of Theodule Buisson and George Grimault, competent witnesses residing in this city, who have signed these presents together with the parties and me, notary, after due reading of the whole.

(Original signed) ANNA CONERY.
THOMAS DWYER.

TH. BUISSON.
GEO. GRIMAULT.

JOSEPH CUVELLIER,
Not. Pub.

A true copy from the original.
[SEAL.] (Signed) JOSEPH CUVELLIER,
Not. Pub.

445 The undersigned, deputy recorder of mortgages for this parish and city of New Orleans, State of Louisiana, do hereby certify that the mortgage resulting from the foregoing act was duly recorded in the mortgage office on the 17th May, 1870, in B. 90, fo. 75.

New Orleans, December 18th, 1875.

(Signed) C. DARCANTEL,
D'y R'c'd'r.

Sale of property.

Anna Conery to John P. Nobles.

STATE OF LOUISIANA,
Parish of Orleans, city of New Orleans:

Be it known that on this twenty-fifth day of June, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States of America the ninety-fourth, before me, William Joseph Castell, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally
446 came and appeared Miss Anna Conery, of lawful age of this city, who declared that for the price and sum of and on the terms and conditions hereinafter expressed she does, by these presents, grant, bargain, sell, convey, transfer, assign, and set over, with a full guarantee against all troubles, debts, mortgages, claims, evictions, donations,

alienations, or other incumbrances whatsoever, unto Mr. John P. Nobles, also of this city, present accepting and purchasing for himself his heirs and assigns and acknowledging delivery and possession thereof, a certain lot of ground situate, lying, and being in the second district of this city, in the square bounded by Canal, Rampart, Custom-house, and Burgundy streets, having English measure thirty two feet nine inches front on said Custom-house street by one hundred and six feet in depth, the whole more or less, which measure is to be taken on the line of property of Joseph Kennedy or assigns and runs towards Burgundy
447 street up to the line which divides the said lot from the property of Peter Cunningham or assigns, together with all the buildings and improvements thereon, rights, ways, and advantages thereunto belonging or in anywise appertaining (the buildings and improvements consisting of a two-story brick slated roof house with cistern and back-buildings); being the same property which said vendor acquired by purchase with another lot from Mrs. Antoine Joseph da Silva, per act passed before Joseph Cavellier, a notary public, in this city, under date of the tenth day of February, eighteen hundred and seventy (1870), and she does not appear to have alienated said property since she acquired the same, as appears by reference to the annexed certificate from the register of conveyances in and for the city and parish, bearing date the 22d May, 1870.

By reference to the annexed certificate from the recorder of mortgages in and for this city and parish, bearing date the 22d June,
448 1870, there appears to be no other mortgages standing in the name of said vendor and recorded against the property herein conveyed than the draining privilege; the one she granted in favor of her vendor, Mrs. A. J. da Silva, per act of J. Cavellier, notary public, dated 10th Feb'y, 1870, to secure the sum of $3,366.66⅔ int., costs, &c., the payment of which mortgage is hereinafter assumed by the present purchaser and the one she granted in favor of Thomas Dwyer, per act of Jos. Cavellier, notary, dated 16th May, 1870, to secure the sum of $8,000 int. & costs, as per said act, which latter mortgage has been cancelled so far as it bears upon the property conveyed. To have and to hold the said property and appurtenances unto said purchaser, his heirs and assigns, forever; and the said vendor, the said property and appurtenances herein conveyed to the said purchaser, his heirs and assigns, shall and will warrant and forever defend against all legal claims
449 and demands whatsoever. And the said vendor moreover transfers unto the said purchaser all and singular the rights and actions of warranty to which she is or may be entitled against any and all of the former owners of the property herein conveyed; hereby subrogating the said purchaser in and to the said rights and actions to be by him enjoyed and exercised in the same manner they might have been by the said vendor herself.

This sale is made and accepted for and in consideration of the price and sum of seven thousand five hundred dollars ($7,500), in part payment and deduction whereof said purchaser has 1st presently paid in ready money unto said vendor, the sum of four thousand fifteen $78\frac{1}{100}$ dollars, the receipt whereof she hereby acknowledges and grants acquittance therefor, $4,015.78¼.

2d. Said purchaser hereby puts himself in the place and stead of said vendor, assumes and binds himself to pay to the acquittance of said vendor the afore-recited mortgage of three thousand three hundred and sixty-six $66\frac{2}{3}_{100}$ dollars, being the amount of two certain
450 promissory notes drawn by said vendor to the order of and

by herself endorsed, dated the 15th January, 1870, payable respectively at one and two years after date, at the Bank of America, in this city, each for the sum of sixteen hundred and eighty-three $33\frac{1}{3}_{100}$ dollars, bearing 8% interest per annum from date until paid, which notes are paraphed ne varietur by said Notary Cavillier to identify them with said act passed before him on said 10th Febr'y, 1870, $3,366.66\frac{2}{3}$.

3d. The sum of one hundred and seventeen $\frac{55}{100}$ dollars accrued interest to 21 January, 1870, 117.55; total, $7,500.00.

The said purchaser assuming all the obligations taken by said vendor in said act, and binding himself and his heirs not to sell, alienate, or encumber said property to the prejudice of the mortgage, the payment of which he has herein assumed.

The taxes on said property for the year 1869 have been duly paid and acquitted and receipts therefor exhibited, and said purchaser hereby assumes the payment of the taxes on the same for
451 the year 1870, to the acquittance of said vendor.

And now to these presents personally appeared and intervened George Sutton of this city, who exhibited to me, notary, as the last holder and owner thereof, two certain promissory notes drawn by said vendor, Anna Conery, to the order of , and by herself endorsed, dated the 16th May, payable at one year after date, at the Bank of America, in this city, each for the sum of four thousand dollars, bearing eight per cent. interest per annum from date until paid, which notes are paraphed ne varietur by said Notary Joseph Cavillier to identify them with an act passed before him on said 16th May, 1870, and their payment was secured by mortgage, agreeably to said act, in favor of Thomas Dwyer, on the property herein conveyed and other property, and declared that he does hereby release, purely and simply, the said mortgage, so far as the same bears on the property herein conveyed, and authorizes the erasure thereof to that extent.

Whereupon I, said notary, have mentioned this partial release
452 upon the face of said notes and countersigned the same ne varietur in conformity herewith, and have returned said notes to said George Sutton.

United States internal revenue stamps, amounting to seven dollars and fifty cents, are affixed hereto, duly cancelled at the execution hereof.

Thus done and passed in my office at New Orleans aforesaid, the day, month, and year first above written, in the presence of Laurence McCormack and Harris Murphy, witnesses of lawful age, domiciliated in city, who hereunto sign their names with the parties, and me, the said notary, after reading of these presents.

(Signed) ANNA CONERY.
GEO. SUTTON.
JNO. P. NOBLES.

LAURENCE MCCORMACK.
HARRIS MURPHY.

W. J. CASTELL, *Not. Pub.*

A true copy.
New Orleans, 18 November, 1876.
(Signed) W. J. CASTELL,
Not. Pub.

Answer of Mrs. Ann E. Green. Filed April 11th, 1876.

MRS. A. E. GREEN, TEST'Y EX'X,
vs.
MISS ANNA CONERY.

453 Fourth district court.

No. 43989.

Now into court comes defendant in injunction, pleads a general denial to each and every allegation thereof not hereinafter specially admitted, and, further answering, aver:

That it is untrue and false that said notes were in the possession of plaintiff on or about the 11th of October, 1875; that it is untrue they were obtained by your respondent or by any one *of* her, by fraud or other ill practice; that it is untrue said notes were made for the convenience of plaintiff in injunction, and it is untrue they were stolen from her.

And your respondent aver the fact to be that the property by which said notes are secured belonged to said F. M. Fisk, and to avoid the pursuit of the creditors he placed the same in the name of plaintiff in writ, and secured himself as against her and all others by said notes, and said Ann Conery has no interest or ownership in said notes.

Wherefore she prays said injunction be dissolved, with judg-
454 ment for defendant in twenty per cent. damages and all costs.

And she prays for all general relief.

(Signed) J. L. TISSOT &
HORNOR & BENEDICT,
Att'ys.

Judgment.

No. 43989.

This case came on this day for trial, J. L. Tissot and Hornor and Benedict for defendant in injunction; pl'ff in injunction absent and not represented; when, pl'ff in injunction being called and failed to appear; on motion of Horner and Benedict, of counsel for defendant in injunction, it is ordered, adjudged, and decreed that judgment of non-suit be entered against pl'ff in injunction, Miss Anna Conery, and in favor of defendant in injunction, Mrs. Anne Elizabeth Green, testamentary executrix of the succession of F. M. Fisk, as in case of non-suit, pl'ff in injunction to pay costs of suit.

Judgment rendered May 1st, 1876.

455 Judgment signed May 5th, 1876.

(Signed) B. L. LYNCH, *Judge.*

Motion for new trial.—Filed Dec'r 14, 1876.

Fourth district court, parish of Orleans, La.

MRS. ELIZABETH GREEN, TEST'Y EX., ETC.
vs.
ANNA CONERY. } No. 43989.

On motion of R. King Cutler and C. McRae Selph, of counsel for

Anna Conery, defendant in the above entitled suit, it is ordered that Mrs. Elizabeth Green, testamentary ex., etc., plaintiff therein, do shew cause, on Friday, the 22d day of December, 1876, at 11 a. m., why a new trial should not be granted, for the following reasons, viz:

1st. Because the judgment rendered in this cause by the Hon. B. L. Lynch, judge of the superior district court of this parish, sitting in place of the Hon. Hugh J. Campbell, judge of this hon'l' court, is clearly contrary to law and to the evidence, in this, viz:

1st. That the Hon. Hugh J. Campbell is the judge of this the
456 4th district court, and is not in any manner interested in this cause, not related to any of the parties within the fourth degree, has not been employed or consulted as advocate in the cause, and not recused for any lawful cause, and is competent to render judgment herein; and that the cause was tried before him, the said Hon. Hugh J. Campbell, and submitted to him by counsel for both parties, and therefore the Hon. Judge Lynch could not legally render a decision in the cause.

2d. That even if the Hon. B. L. Lynch, judge of the superior district court, could lawfully consider and render his decision in this cause, the testimony shows that the ownership of the property was in Anna Conery, and that the two notes, with mortgage, were drawn by her for her own use and benefit, and that no other person had acquired any right to the same; that no consideration was given by Dwyer, in whose favor the mortgage was made, or any other person, and especially by Fisk
457 or his succession; and if these two notes were obtained after maturity by the succession of Fisk, or by Fisk himself, they cannot recover on the same, because want of jurisdiction is specially pleaded. That the ownership of the two notes and the possession of the same were clearly and positively shown by the testimony in this cause to be in and with Anna Conery, from the execution of the same until she was unlawfully dispos'ed of them.

2d. Because all of the testimony offered on behalf of plaintiff Green was clearly and positively contradicted and refuted by the testimony offered on behalf of Anna Conery, defendant.

3d. Because the defendant, Anna Conery, has discovered since the trial evidence important to her cause, which she could not with due diligence have obtained before, viz:

That mover expects to prove by the testimony of Mr. T. A. Bartlett, an attorney of this city, that the ownership of the property herein seized on Burgundy street was hers in good faith, and that F. M.
458 Fisk never had any right to the same, or claimed any rights to the same, and that the two notes sued upon were never owned by F. M. Fisk, or claimed by him, but were asserted by him to be the property of Anna Conery, and were in her possession.

That F. M. Fisk had the most perfect confidence in her.

That movers expect to prove by one Black, a resident of this city, that F. M. Fisk never employed the young Fisks, his sons, in his business from 1870 to 1874, and that he never had any confidence in the said sons.

That mover expects to prove by the testimony of Col. James, that M. Benner, a witness on behalf of plaintiff Green, swore falsely on the trial of this cause.

Personally appeared before me, the undersigned, Anna Conery, who, being duly sworn, doth depose and say that she has, since the trial of the above cause, discovered evidence material and important to her, as

alleged above, which she could not have, with diligence, prior to
459 the trial, and that she did use all efforts and diligence to procure the said necessary testimony.

her
N. +
mark.

Sworn to and subscribed before me the 14th day of December, 1876.
[SEAL.] (Signed) WM. H. HOLMES,
Second Justice of the Peace, Parish of Orleans.

udgment.

No. 43989.

This cause having been submitted to the court for adjudication on the written evidence on file, and the court considering the law and the said evidence to authorize the same, it is ordered, adjudged, and decreed that the injunction herein issued March 24th, 1876, be, and the same is hereby, dissolved, with ten per cent. damages, to be paid by the def't, Anna Conery, to plaintiff, Mrs. A. E. Green, testamentary executrix of the succession of F. M. Fisk, the said Anna Conery to pay the costs of said injunction.

460 Judgment signed January 19th, 1877.
(Signed) W. T. HOUSTON,
Judge of the 4th District Court, Parish of Orleans.

Motion and order for a suspensive appeal.—Filed January 29th, 1877.

Hon. 4th dist. court for the parish of Orleans.

MRS. ANN E. GREEN, TESTAMENTARY EXECUTRIX of the succession of F. M. Fisk, deceased,
vs.
ANNA CONERY. } No. 43989.

On motion of R. King Cutler, of counsel for defendant, Anna Conery, and on suggesting that defendant filed an opposition and obtained injunctions against plaintiff and E. Waggaman, civil sheriff, and that her said opposition was decided against her and her injunction dissolved with ten per cent. damages by Hon. B. L. Lynch, acting in the place of Hon. H. J. Campbell, judge of this hon. court, on the 11th day of
461 December, 1876, and that said judgment was signed by Hon. W. T. Houston, judge of this court, on the 19th day of January, 1877; and on further suggesting that she feels aggrieved at said judgment, and she is advised and believes that there is error in said judgment to her prejudice, and that said judgment should have been rendered in her favor; therefore, it is ordered that said Anna Conery, pl'ff in said opposition and injunctions, be, and she is, allowed a suspensive appeal, upon her giving bond, with good and solvent surety, conditioned as law directs, in the sum of two hundred and fifty dollars—said appeal to be made returnable in the supreme court of Louisiana, at New Orleans, on the third Monday of February, 1877.

I hereby authorize and empower my wife, Anna Conery, to appear in person or by counsel and take the within set forth appeal, to sign all necessary appeal bonds, and to do and perform all and every act
462 necessary in the premises.

(Signed) JAMES REAGAN.

Appeal bond.—Filed Jan'y 29th, 1877.

Know all men by these presents that we, Mrs. Anna Conery, wife of James Reagan, and by him authorized as principal, and Patrick Douglass, of the parish of Orleans, as surety, are held and firmly bound unto John Curry, clerk of the fourth district court for the parish of Orleans, his successors, executors, administrators, and assigns, in the sum of two hundred and fifty dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated in the city of New Orleans on this 29th day of January, in the year of our Lord one thousand eight hundred and seventy seven.

Whereas the above bounded Anna Conery this day filed a motion of appeal from a final judgment rendered against her said Anna
463 Conery, in the suit of Mrs. Ann E. Green & al. vs. Anna Conery, No. 43989, in the fourth district court for the parish of Orleans, on the 11th day of December, 1876, and signed on the 19th day of January, 1877:

Now the condition of the above obligation is such that the above bound Anna Conery, wife of James Reagan, shall prosecute said appeal, and shall satisfy whatever judgment may be rendered against her, or that the same shall be satisfied by the proceeds of the sale of her real estate or personal, if she be cast in the appeal; otherwise that the said Patrick Douglass shall be liable in her place.

(Signed) ANNA her + mark. CONERY. [L. S]

(do.) PATRICK his + mark. DOUGLASS. [L. S.]

Cor. St. Joseph and Tchoupitoulas streets, it being 95 St. Joseph st.

Signed, sealed, and delivered in the presence of—
(Signed) R. KING CUTLER.

464 *Certified copy of opinion and decree.—Filed June 11th*, 1878.

Supreme court of the State of Louisiana.

MRS. ANN E. GREEN, EXECUTRIX, *vs.* MISS ANNA CONERY. } No. 6611.

Appeal from the fourth district court for the parish of Orleans.

CLERK'S OFFICE, *New Orleans, April 15th*, 1878.

Mr. Justice De Blanc delivered the opinion and decree of the court in the words and figures following, to wit:

In 1870, on the 16th of May, to secure two notes of each $4,000 drawn to her own order and by her subscribed and endorsed, Miss Anna Conery mortgaged, in favor of Thomas Dwyer, the properties referred to in the pleadings, the title to which then stood and still stands in her name.

Miss Anna Conery admits, and of this there can be no doubt, that, at the date she gave that mortgage, she owed nothing to Dwyer, and
465 that the notes secured by that mortgage were made for the convenience of F. M. Fisk. They passed in his possession and he

deposited them with Benner as collateral security. After the death of Fisk those notes were returned by Benner to Washburn, the agent of plaintiff, who, as executrix of the estate of Fisk, obtained an order commanding the seizure and the sale of the property mortgaged to secure the payment of said notes.

Anna Conery, now Mrs. Reagan, opposed the sale of the property seized under said order, on the grounds—

1st. That the notes sued upon are without consideration, were drawn for her own convenience, and had never been out of her possession until plaintiff or her agents obtained them by fraud.

2d. That immediately after she and Dwyer left the office of the notary, before whom she granted the mortgage, he handed back the notes to her, she received them as her property, and retained them as such until the month of June, 1874; that by that fact said notes and mort-
466 gage were extinguished, not *not* only as between Dwyer and her, but even as to third parties.

In answer to Mrs. Reagan's injunction, Mrs. Green, denies every one of her allegations, and avers that the property thus mortgaged belonged to F. M. Fisk, who, to avoid the pursuit of his creditors, placed it in the name of plaintiff in injunction, and, to protect himself against her, took said notes and mortgage.

The record is heavy with conflicting and irreconcilable declarations.

Ringrose, one of Mrs. Ranger's witnesses, who, in a previous suit, had testified that she told him that she had destroyed said notes, testified in this case that he had seen them in her possession after the death of Fisk, but he could not positively remember whether she said that she had destroyed or lost them. The description he gave of the notes is manifestly incorrect.

Benner, another witness of Mrs. Reagan, said that he had never seen the notes in her possession, but had seen them in possession of
467 Fisk, from whom he had received them as collateral security, and in the hands of Washburn, the agent of said deceased's executrix; that Mrs. Reagan was confounding these notes with others which he gave her.

On the 29th of July, 1875, Mrs. Reagan instituted a proceeding in the fourth district court to compel the cancellation of the mortgage of the 16th of May, 1870, in favor of Dwyer, and, in that proceeding, alleged that the mortgage was made without consideration, for the convenience of a friend; that the notes were never used, remained in her possession, and were recently destroyed by her.

On the trial of her motion to cancel the mortgage she swore that from the time they were delivered to her by Dwyer the notes had never been out of her possession, and that two or three months before that trial she had torn them up and thrown them in the fire. She now asserts that they were illegally taken or stolen from her.

On the 15th of January, 1870, the mortgaged property was ad-
468 judicated to F. M. Fisk for account of Miss Anna Conery, and the act of sale from the owner to her was passed on the 10th of February; on the 9th, one day before the act of sale was signed by her, Miss Conery gave to F. M. Fisk an indefinite power of attorney, which placed under his immediate and absolute control not only the property thus adjudicated to her, but she owned. F. M. Fisk was then involved in litigation with his wife, and little inclined to expose to her pursuit whatever he might acquire; but he certainly paid with his own funds the price of repairs to and taxes on the property which he caused to be adjudicated for account of Miss Conery. She herself said on the trial,

"He paid for it one week after he bought it" and, asked who she meant by he, she answered, "Mr. Fisk."

Her counsel contends and we concede that by seizing said property as hers, the executrix of Fisk is precluded from disputing her title to the same. This being conceded, there remains to be decided
469 whether the notes belong to and were in the possession of Fisk when he died.

How, why, and under whose instructions were these notes subscribed and the mortgage granted? Under the instructions of Fisk, for his benefit, and through an agent of his choice—Dwyer—who, on that occasion, acted as the deceased's agent, says as soon as he left the notary's office he returned the notes to Miss Conery. If so, to the knowledge of Miss Conery, he did what he had no right to do, and the irregular possession which may have followed that irregular return could in no way impair the rights of Fisk. At his death those notes were, according to Mrs. Reagan's declaration, in her own hands; and, according to that of Benner, in his, and as collateral security received from Fisk. Benner's declaration is corroborated by an entry of the 30th of May, made by the deceased himself in his day-book, and which attests that at that date the identical notes were left with Benner as collateral security for signing a bond.

470 When the mortgaged property was adjudicated to Miss Conery she had not the means to pay its price, or, if she had, she has failed to prove it, and the intention of Fisk in taking the title in her name must have been to place it out of the reach of his wife and creditors, or else to make to Miss Conery a disguised donation.

The notes and mortgage may, then, have been given to protect the supposed liberality against any action on the part of the heirs of Fisk, or they may have been required by him to protect himself against the semblance of a donation or of a sale. If the transfer of the 10th February, 1870, was in reality an intended donation from Fisk to Miss Conery, how explain that, when he was on his death-bed, he did not remember and was not reminded that he held two notes, subscribed for exclusively his convenience, the enforcement of which would inevitably divest her title? How explain that she, having access to the safe, the desk, the boxes in which those notes were kept, did
471 not ascertain that they were not where he habitually kept them, and that she did not inquire what he had done with them? How reconcile her declaration that she tore up those notes and threw them in the fire, and the fact that they are now in the hands of the executrix of Fisk? Unremoved improbabilities encircle almost every fact on which she relies to sustain her demand.

May it not be that Fisk, satisfied that he had done enough for her, and that his children were entitled to what he had? May it not be that those notes, as to him, represented the value of the property placed in the name of Miss Conery? In not a line of the three transcripts submitted to our consideration have we found the least trace of a fixed intention on the part of the deceased to give either the property or the notes, and, under these circumstances, we think it just to leave said notes where they have been left. Not through inadvertance or carelessness, but, it seems, with the consent of Miss Conery and by the will of Fix, they have passed into the possession of the heirs
472 of the latter, and the trial has disclosed no fact, raised no presumption, which would justify us in wresting them from their possession.

In only one respect the judgment of the lower court is incorrect.

The injunction in this cause was granted under articles 739 and 740 of the code of practice, and no damages should have been allowed against the plaintiff in said injunction. (C. P., 743; 19 A., 181; and 15 L., 101.)

Since nearly forty years this court has made a distinction between the injunction granted under the articles 739 and 740 and those granted on bond and security. In regard to the former it said and repeated that the law of eighteen hundred and thirty-one are not applicable to them.

The code of practice provides "that the plaintiff against whom
473 an injunction has been obtained under articles 739 and 740 may compel the defendant to prove, in a summary manner before the judge, the truth of the facts alleged in his opposition," and if he fails to do so, that code expressly directs the nature and extent of the decree to be rendered. "The judge shall dissolve the injunction he had granted, and the sale of the property shall proceed," &c. (C. P., 741, 743; 15 L., 101; 4 A.; 19 A., 181.)

The distinction itself may be unreasonable inasmuch as, to a certain extent, the order of seizure and sale can be considered as a moneyed judgment; but that distinction is clearly indicated in the law, and we adhere to the construction placed upon it by our predecessors. (29 A., p. 634.)

It is therefore ordered, adjudged, and decreed that in so far as it condemned Anna Conery to pay ten per cent. damages to the
474 executrix of the succession of Fisk, the judgment of the lower court is amended and said damages disallowed.

It is further ordered, adjudged and decreed that, as amended, said judgment is affirmed; the costs of the appeal to be paid by the succession of F. M. Fisk.

A true copy.

(Signed) T. McC. HYMAN,
Dy. Clerk.

475 *Exhibit No. 1, offered in connection with Mr. Washburn's testimony.*

Copy of judgment.

(At the request of * * the following judgment was registered.)

THE STATE OF LOUISIANA.

6th district court.

I hereby certify that on the 22d day of June, 1871, judgment was rendered in this court in the following entitled suit in the words and figures following, to wit:

MARY ANN FISK
vs.
HER HUSBAND, F. M. FISK. } No. 128.

In this case, by reason of the verdict of the jury in favor of the plaintiff, her husband, F. M. Fisk, and by reason of the law and evidence being in her favor: It is ordered and adjudged and decreed that the plaintiff, Mary Ann Fisk, be divorced from her said husband, F. M. Fisk, and the bonds of matrimony between them be and they are hereby dissolved.

And it is further ordered, adjudged and decreed that the
476 plaintiff, Mary Ann Fisk, recover from her said husband one-half of all the property acquired by her said husband and belonging to the community since the 27th June, 1842, the date of their marriage, with the fruits and revenues thereof after the rendition of this judgment, and that defendant pay the costs of suit.

Judgment signed 27th June, 1871.

(Signed) W. H. COOLEY,
Judge.

A true copy.
New Orleans, July 27, 1871.
(Signed) W. WALSH,
Dy. Clerk.
C. B. FISH, *D. R.*

I, the undersigned deputy register of conveyances in and for the parish of Orleans, State of Louisiana, do hereby certify that the within instrument of writing is a true and correct copy of a judgment registered on the 27th of July, 1871, in book 100, folio 134, of this office.

New Orleans, June 7th, 1877.
[SEAL.] (Signed) G. DULROED, *R. R.*

477 *Exhibit No. 2.—Offered on behalf of plaintiff and filed with testimony.*

STATE OF LOUISIANA,
Parish of Orleans:

OFFICE OF THE REGISTER OF CONVEYANCES,
New Orleans, 6th Sept'r, 1876.

The undersigned, register of conveyances in and for the parish of Orleans, State of Louisiana, hereby certifies that according to the records of this office it does appear that Mr. F. M. Fisk had alienated the following property, to wit:

1st. Six lots of ground in the fourth district of this city, designated by the Nos. 4, 5, 11, 12, 13, and 14, in square bounded by Josephine, Jackson, Fulton and Roussean streets, acquired the 26th of March, 1866, registered in book 90, folios 566 & 567.

2d. A lot of ground in the 1st dist. of this city, designated by the No. 1, in square bounded by Poydras, Rocheblane, Perdido and Dorgenois streets, forming the corner of Poydras and Rocheblane streets, acquired the 28 of May, 1866, registered in book 92, folio 522.

3d. A lot of ground in the same dist. in square bounded by
478 Peters, Fulton, Girod, and Notre Dame streets, forming the corner of Peters and Notre Dame streets. Acquired the 21st of March, 1866. Registered in book 91, folio 134, sold to M. Benner the 7th of August, 1871. Registered in book 100, folio 189, sale by the sheriff.

4th. Two lots of ground in the same square bounded by Peters, Fulton, Girod and Notre Dame streets. Acquired on the 3d April, 1862. Registered in book 87, folio 407, and the other the 21st March, 1866. Registered in book 91, folio 135. Sold to E. W. Foster by the sheriff for State taxes, the 20th of January, 1874. Registered in book 104, folio 269.

Note 1st. The injunction restraining F. M. Fisk from selling any property acquired by him since the 27th of June, 1842. Granted the 31st of March, 1869. Registered in book 96, folio 734.

Note 2d. Decree of divorce and judgment for one half of all property acquired by him since the 27 of June, 1842. Rendered the 22d of June, 1871. Registered in book 100, folio 134.

Note 3d. The assignment in bankruptcy of all property belonging to him to C. W. Goddard the 7th of February, 1872. Registered in book 103, folio 253, on the 11th March, 1874.

Note 4th. Judgment of court in the matter of the succession of F. M. Fisk, putting F. M. Fisk, H. C. Fisk, Mrs. A. E. Green and G. Fisk in possession of his estate, signed the 6th of August, 1875. Registered in book 203, folio 924.

Note 5. The whole of the above described property sold by C. W. Goddard, assignee, to C. M. Green the 6th of April, 1876. Registered in book 107, folio 482.

[SEAL.] (Signed) C. B. FISH, *Reg.*

Exhibit No. 3.—Offered on behalf of plaintiff & filed with testimony.

To James Monroe Mackie, of county of , and State of . Creditor of Francis H. Fisk, bankrupt:

You are hereby notified that a warrant in bankruptcy has been issued out of the district court of the United States for the eastern district of New York against the estate of Francis M. Fisk, adjudged a bankrupt upon his own petition.

That the payment of any debts and the delivery of any property belonging to said bankrupt, to him or for his use, and the transfer of any property by him are forbidden by law.

That a meeting of the creditors of said bankrupt, to wit:

THE CITY OF NEW ORLEANS,
State of Louisiana:

Joseph D. Weaver, N. O., La		$11,258 33
W. W. Washburne,	do.	5,258 70
Milton Benner,	do.	6,800
Frederick G. Fisk,	do.	8,000
A. G. Farwell & Co., Boston, Mass		15,735
Alexander Wheeler, N. O., La		960
Victor Fussman,	do.	1,708
Unknown Briggs,	do.	6,000
Henry Lindrop,	do.	115
Roberts & Co.,	do.	315
Mary Thompson,	do.	200
Mary A. Goff,	do.	600
J. Monroe Mackie, Phil., Penn		5,751
Higgins & Green, San Fran., Cal		6,250
Wm. B. Morris, Blois City, Idaho		5,333
George Sutton, Louisville, Ky		3,461
Samuel Williams, New York City		760
J. C. Stewart, New Orleans		100
Whitaker, Atlanta, Ga		$500
Greene,	do.	350
Leonard Van Buskirk, N. York City		3,950
Dr. Maxwell,	do.	25

To prove their debts and choose one or more assignees of the estate, will be held at a court of bankruptcy to be holden on the 5th day of February, A. D. 1872, at 10 o'clock a. m., at No. 189 Montague street, in the city of Brooklyn, before Mr. David C. Winslow, register.

(Signed) SAMUEL R. HARLOW,
United States Marshal as Messenger, Eastern District of New York.

Exhibit No. 4.—Offered in connection with Mr. Washburne's testimony and filed with testimony.

F. M. Fisk.

OFFICE OF MORTGAGES.

The undersigned, recorder of mortgages for the parish of Orleans, city of New Orleans, State of Louisiana, certifies that in the records of this office there are no other mortgages standing in the name of Fran-
482 cis M. Fisk, and recorded against two lots of ground, &c., situated in the 4th district of this city, in the square bounded by Jackson, Josephine, Fulton, and Rousseau st's, designated by the Nos. 4 and five; said lots adjoin each other and measure each 30 feet 5 inches and 1 line front on Jackson street by a depth of 120 feet between parallel lines.

Than:

1st. The draining privilege;

2. B. 83, fo. 167.—The mortgage he granted in favor of the society for the relief of destitute orphan boys, his vendor per act of A. Mazureau, notary, dated 26th March, 1866, to secure $1,333.35, int., costs, &c.;

3d. B. 89, fo. 450.—The one he granted in favor of W. B. Morris, per act T. G. Curtis, notary, dated 9 Jan'y, 1871, fo. 1,242.86⅔, amount paid for him, said Morris, and applied to the payment of taxes due city of New Orleans for the year 1869 on properties belonging to said Fisk.

483 4. B. S. T., 1869, 4 dist. ct.—The privilege in favor of the State for taxes 1869 on above property, amt. to $12—interest, costs, &c.

5. B. S. T., 1870, folio 331.—The privilege in favor of same for taxes 1870, amounting to $23.20—int., costs, &c.

6. B. S. T., 1871, fo. 238.—The privilege in favor of same for taxes 1871, amounting to $34 40, int., costs, &c.

7. B. J., 12, fo. 153, No. 10,445, recorded 14 Jan'y, 1867, 10th Feb'y, 1864, for $403.82.—The general one in favor Hansel Edwards, resulting from a judg't rendered by 6th dist. ct., the interest and costs for $403.82.

8. B. J., 12, fo. 232, No. 16,379, recorded 8th October, 1867.—The general one in favor of the city of New Orleans resulting from a judgment rendered by 5th dist. court on the 21st of Febr'y, 1867 for $50—int., costs, &c., against the same.

No. 128, B. J., No. 13, fo. 413, recorded on the 14 Jan'y, 1870.—The general one in favor of Mary Ann Fisk, resulting from a judgment rendered by the 6th dist. court on the 2d November, 1869, for the sum of $200, and with interest stipulated in said judgment, and costs of
484 suit against same for alimony, payable monthly, from 16th November, 1868.

No. 128, b'k J. M., No. 13, fo. 581, rec'd on the 3 Jan'y, 1870.—The general one in favor of the same, resulting from a judgment rendered by the same court on the 2d November, 1869, for the sum of $200, with interest stipulated in said judgment, and costs of suit against same, for alimony from 16th November, 1869.

No. 128, b'k J. M., 13, fo. 581, recorded on the 3d June, 1870.—The general one in favor of the same, resulting from a judgment rendered by the same court on the 31st March, 1869, for the sum of , and costs of suit against same, enjoining and restraining him from disposing in any manner the property real and personal.

No. 1696, b'k J. M., No. 13, fo. 725, recorded on 23 Dec'r, 1870.—The general one in favor of A. G. Farweil & Co., resulting from a judgment rendered by the 5th dist. court on the 16 December, 1871, for the sum of $15,735 and 59 cents, with interest stipulated in said judgment and costs of suit against the same.

485 No. 1696, bk. J. M., No. 14, fo. 122, recorded on the 6 June, 1871.—The general one in favor of the same resulting from a writ issued by the same court on the 5th June, 1871, for the sum of $15,375 and 59 cents, with interest stipulated in said suit and costs of suit against the same of the above property and others.

No. 23633, bk. J. M., No. 14, fo. 137, recorded on the 15 June, 1871.—The general one in favor of C. V. Fassman, resulting from a judgment rendered by the 4th dist. court on the first of June, 1870, for the sum of $1,708 and 05 cents, with interest stipulated in said judgment and costs of suit against same.

No. 128, bk. J. M., No. 14, fo. 178, recorded on the 26th July, 1871.—The general one in favor of Mary Ann Fisk, resulting from a judgment rendered by the 6th dist. court on the 22d June, 1871, and costs of suit against same, dissolving the bonds of matrimony existing between her and said plaintiff, and decreeing plaintiff to be owner of one-half

486 of property acquired during the community.

No. 2684, bk. J. M., No. 14, fo. 205, recorded on the 13 June, 1871.—The general one in favor of the same resulting from a judgment rendered by the same court on the 13 Sept., 1871, and costs of suit against the same sequestering his property.

No. 1188, bk. J. M., No. 91, fo. 237, recorded on the 2d of Sept'r, 1872.—The general one in favor of city of New Orleans, resulting from a judgment rendered by the 5th dist. court on 27 Jan'y, 1871, for the sum of $663, with interest stipulated in said judgment and costs of suit against same on above property and others.

No. 30522, bk. J. M., No. 97, fo. 341, recorded on the 2d of Sept'r, 1872.—The general one in favor of same resulting from a judgment rendered by the 4 dist. court on the 27 March, 1872, for the sum of $448, with interest stipulated in said judgment and costs of suit against same of above property & als.

New Orleans, March 22, 1872.

[SEAL.] (Signed) C. DARANTEL, *Dy.*

487 *Exhibit No. 5, offered in evidence in connection with Mr. Grant's testimony and filed with testimony.*

(Batch of letters.)

BOSTON, *March* 18, 1873.

F. M. FISK, Esq.,
157 *Camp St., New Orleans:*

DEAR SIR: Yours of 11th just at hand and noted. It is a long time since you agreed to square up the claim we hold against you, first by paying 50 pr. ct. of the claim, and subsequently by redeeming the real estate in N. O., and paying us at once $6,000. We ought to have received that money long and long ago and we have been discouraged

about your ever accomplishing it, and now you make a new suggestion which we don't quite see the force of.

Unless you are willing and able to carry out your last agreement and pay us the $6,000 in a very short time, we shall withdraw all former agreements for settlement and let the matter stand just where it is.

Yours, &c.,

A. G. FARWELL & CO.

488 BOSTON, *October* 30, 1872.

F. M. FISK, Esq.,
34 Park Row, N. York:

DEAR SIR: Yours of 28th received and noted.

We have waited and waited month after month for you to carry out our proposition to accept $6,000, which we made with the condition that it should be paid in a very short time, and after this long delay we don't consider ourselves obliged to wait any longer, or bound to accept that amount now.

We have received a proposition from N. O. for the property, which we may find it for our advantage to accept, which will put us in funds which we have needed so long.

Yours truly,

A. G. FARWELL & CO.

BOSTON, *Feb'y* 5, 1872.

F. M. FISK, Esq.,
73 Livingston St., Brooklyn, N. Y.:

DEAR SIR: Your favor of 21st ult. duly received, and would
489 have replied sooner, but writer was confined to his house last.

We regret that you found it necessary to go into bankruptcy.

We are not able to be present at the meeting of creditors to day, but suppose there will be other meetings hereafter.

Please inform us by return mail who is appointed assignee, & oblige,

Yours, truly,

A. G. FARWELL.

BOSTON, *Oct.* 4, 1871.

F. M. FISK, *New York:*

DEAR SIR: Yours of 2d inst. received and noted.

It has been intimated to us that a party stands ready to give us 50 pr. ct. of our judgment against you with interest, and free from all expenses, and give us the money at once. We think it comes from the other side, but don't know.

Now, if you will make us a proposition to pay us 50 p'r ct.
490 of our judgment against you, including interest, and release us of all expenses that have accrued, and pay the cash at once, we don't say we will accept it, but we will entertain the proposition if it comes immediately.

Yours, truly,

A. G. FARWELL & CO.

BOSTON, *Jan'y* 3, 1871.

F. M. FISK, Esq., *New Orleans:*

DEAR SIR: Your favor of 17th ult. at hand expressing opinion that

our claim will soon be settled up to our satisfaction. We hope it will be without any delay, for we need the notes to use very much.

We accepted your proposition for settlement under the expectation that the account would be settled speedily, and we are now in daily expectation of receiving the notes as per agreement.

With compliments of the season,

We remain, yours truly,

A. G. FARWELL & CO.

491 BOSTON, *Dec'r* 24, 1870.

HENRY B. KELLEY, Esq.,
No. 30 Camp st., New Orleans:

DEAR SIR: Your favor of 19th inst. is before us, and in reply we have to say that our understanding with Mr. Fisk, when he was here in Oct. last, was that we would take Wallace & Co.'s notes for 50 % of our claim including interest at 7 % up to maturity of said notes, which was to be six months from Oct. 19, 1870, and would amount as per a/c rendered, viz:

Am't due us M'ch 1, 1870	$15,735 59
Interest on same to Oct. 19, 1870	697 60
Due us Oct. 19, as handed Mr. Fisk	$16,433 19
Add 6 mo's & 3 days' interest	584 74
Am't due Ap'l 19–22, 1871	$17,017 93

Fifty p'r c't of which is $8,508\frac{96}{100}$ due Ap'l 19–22, 1871, and you will settle the account by receiving Wallace & Co.'s notes for that amount maturing Ap'l 19–22, 1871.

Yours,

A. G. FARWELL & CO.

492 BOSTON, *March* 14, 1870.

F. M. FISK, Esq., *New Orleans:*

DEAR SIR: We have received no letters from you since yours of June 24, 1869, in which you promised to call upon very soon, with the expectation of paying us the balance, our due, and have been disappointed in not seeing you up to present time.

We have heretofore sent you a/c current to April 1, '69, and now enclose supplementary account current with interest made up to 1st inst., showing balance, our due, of $18,484\frac{97}{100}$, as cash 1st inst.

Now, we are very much in want of money, and must earnestly intreat you to remit us this balance to help our necessities. If you don't find it convenient to remit the full amount at once, do remit us half of it at once, and the other half soon afterwards. We have waited a long time for this money under daily expectation of receiving it, and do
492 assure you that we are in great need of it at this time, and hope and trust that you will not fail to remit us without delay.

We remain, very truly, yours,

A. G. FARWELL & CO.

BOSTON, *May 6th*, 1869.

F. M. FISK, Esq.,
Care First National Bank, Atlanta, Ga.:

DEAR SIR: We are in receipt of your valued favors 19th and 29 ult.,

noting your remarks, and trust your visit to Atlanta will be for your advantage and that somebody will purchase the property so that the $10,000 will be forthcoming, for we are sadly in want of money at this time. Money has been extremely close here for the last two months, and our pile has run clean down so that we feel very poor. Hope you will have good luck in securing judgment on the other $25,000 you refer to and soon after get your money.

We thank you for confessing judgment in our favor so that it
494 will take precedence of any other claims against you in N. Orleans, and for assurance that we shall be protected in full at all events.

Business quiet here.

Yours truly,

A. G. FARWELL & CO.

BOSTON, *April* 22, 1869.

F. M. FISK, Esq., *New Orleans:*

DEAR SIR: We have your favor 16th inst., carefully noting your remarks. The principal items in the statement you sent are already in the account we sent you on 7th inst.

The $5,500 paid O. Cohen you will please find at your credit under dates of Feb'ry 19 $4,128.13, and March 14 $1,340.41 & $11.70 & 19.76, making total of $5,500.

For the taxes you drew a draft at Macon Dec'r 14, for $1,617.73, covering the items you mention, and the tax on sixty bales besides as you at that time advised, and you will find that d'ft charged to joint a/c under date of Dec'r 23, 1867.

495 Your half of the other items will be so small that we think it hardly worth while up another account. You had better confess judgment on balance of account as rendered, say $17,805 $\frac{23}{100}$, and we will make the items of discount and expenses right with you when you come on.

Business very quiet. Money continues very close.

Yours, truly,

A. G. FARWELL & CO.

BOSTON, *April 7th*, 1869.

F. M. FISK, Esq., *New Orleans:*

DEAR SIR: We have your val'd favor of 31st ult., carefully noting your remarks, and now enclose our joint account including interest to 1st inst., which is closed by transferring the profits one-half $10,685 $\frac{72}{100}$ to your general a/c and the other half to our p. & loss a/c.

We further enclose your general a/c with interest made up to 1st inst., showing a balance due us as cash at that date of $17,805 $\frac{23}{100}$, all
496 which we trust will be found correct and satisfactory. We also enclose a letter as you desired directing that prompt action should be taken, as you will see.

The a/c sales are of course all made up, but we think it unnecessary to send them to you, as you will be here by and bye to examine them. Hoping all will be satisfactory, we remain,

Very truly, yours,

A. G. FARWELL & CO.

BOSTON, *April* 3, 1868.

F. M. FISK, Esq., *New Orleans:*

DEAR SIR: We are in receipt of your favors of 23 and 27 ult., carefully

noting your remarks, and very much regret your ten days' confinement to your bed from illness. Hope you are entirely recovered before this time. We send all the Alhambra's papers this afternoon by M. J. Ford, attorney, Savannah, Ga., agreeable to your request, and tell him we think the
497 claim just, and that you ought to recover at law. Up to the present time we have invoices for 2,136 B c and bills lading for 2,139 bales all told, and the 2,139 bales have all been received and sold.

We have been hoping to receive some b'l lading for cotton purchased up Red or Arkansas Rivers, though we are not yet advised whether your agent has bought any at either point. Our money market has been, and still is, very close, and we have suffered considerable inconvenience from your not remitting the money you have on hand unused. You said you should remit it several week ago, unless you bought and shipped corn, which we could see no money in.

Cotton m'k't firm, but not much doing. We hope to receive remittances from you soon, for we really need the money.

Yours, truly,

A. G. FARWELL & CO.

498 *Exhibit 5 offered in connection with Mr. Grant's testimony, and filed with testimony.*

(Copy.)

Mess. A. G. Farwell & Co. to William Grant, att'y.

July	1, 1871.	To cash paid F. G. Fisk for you in his mo'tg'e	$600		
	"	" costs paid sh'ff on sale of furniture	160		
	"	" expense of trip to see Fisk in Miss	10		
	5,	" Am't paid O. Morel, notary, for transfer of Fisk m't'ge	15		
	14,	" expense of another trip to see Fisk in Miss	10		
	19,	" erasing mortgage on Fisk's property	4		
Mc'h	26, '72.	" deposit to meet sheriff's costs.	300		
		" am't paid cl'k's costs	64	75	
Ap'l	17,	" cash paid curator ad hoc	100		
	30,	" she'ff's costs advanced	500		
May	11,	" " " "	409	67	
Ap'l	17,	" insurance, $7,000 on 22 Natchez st	119		
		Total disbursements	2,302	42	
May	14,	" fees in M. A. Fisk vs. you 5 D. C.	250		
		" " " " " " " 6 D. C	100		
		" " " Farwell & Co. vs. Fisk 5 D. C.	750		
					3,402 42
499	May 25, '72.	To additional costs for sheriff and recording stamps, &c			16 50
					$3,418 92

CR.

July 1, 1871.	By cash of F. M. Fisk for costs	$100	00		
2, "	" " " " " " " " "	660			
Ap'l 1, 1872.	" rent of 22 Natchez st. for M'ch,'72.	50			
May 1, 1872.	" " " " " " Ap'l " .	50			
" 24, "	" costs refunded by sh'ff.....	106	25		
" 25, "	" order drawn in favor of Josiah Bacon	201	5	$1,167	75
	To balance due.....			$2,251	17

New Orleans, La., May 20, 1872.
(Signed) WM. GRANT.

Exhibit 6, offered in connection with Mr. Grant's testimony, and filed with testimony.

(Three letters.)

LAW OFFICE WILLIAM GRANT,
12 EXCHANGE PLACE.
New Orleans, July 26th, 1871.

F. M. FISK, Esq.:

DEAR SIR: George Penn, esq., called on me this morning and mentioned some plan he had for stopping the sale of the New Levee
500 street property. He will communicate his views to you.

I have not had time to examine the question and give an opinion.

The only question which can be tried in the injunction case against Farwell & Co. is the solvency of the bond, and whether a case for injunction has been set up. The amount of the bond is fixed at the discretion of the judge, and cannot be questioned. I see no other course but to wait until we can try the case on its merits in Nov'r next. The bond I believe solvent.

Penn, I believe, will advise you if anything can be done successfully to resist the Davidson and Hill sale. Unless some cause can be set up an injunction would co t you, in damages, at least $1,200.

Very truly,

WM. GRANT.

LAW OFFICE WILLIAM GRANT,
12 EXCHANGE PLACE,
New Orleans, August 5, 1871.

F. M. FISK, Esq.,
Pass Christian:

501 DEAR SIR: I sent you a telegram this a. m., say I could not meet you as requested. I have a suit in ejectment to bring in East Baton Rouge, which must be filed and citation served before the 7th to save prescription, and I am compelled to go up by this 5 p. m. to institute it. I wrote you two days ago that I could not induce any of my friends to buy the property at what it will cost, say $5,500, to pay D. & H; at the same time I said I could get a friend to buy it in safely if I was placed in funds.

I am sorry I cannot meet you, for if it could be accomplished I would like to save this property, but my interests at Baton Rouge are of 5

times the value of this store and I cannot neglect them. Before you go North, however, I will meet you at the Pass and go over the whole business and arrange our defense. Cooley was here Thursday and presume is yet.

Will return Monday or Tuesday morning.

Very truly,

WM. GRANT.

501*bis* LAW OFFICE WILLIAM GRANT,
12 EXCHANGE PLACE,
New Orleans, Oct. 27, 1871.

F. M. FISK, Esq.:

DEAR SIR: Yours of the 22d came a few moments after my letter of this a. m. was dispatched. I will write again to Farwell & Co., and if possible learn their wishes as to the carrying out the original arrangements.

Don't you see they cannot promise anything without jeopardizing their claim at this stage? I have requested them to give me a hint of their wishes and it will be sufficient. I am willing, and indeed anxious, to help you all I can and serve my clients at the same time, as is my duty, but I can't see how your going into bankruptcy will help us or you. Cooley made seizure of the revenues of the property which I had not seized, intending to give you the chance of drawing them yourself.

This would have worked well enought but for the injunction
501*bis*[1] which prevented a sale.

The thing to be done now is for Farwell & Co. to bond the injunction and proceed with the sale and thus defeat them. But who will go $15,000 bond for you or F. & Co. in N. O's?

I have written F. & Co. fully and will write again.

Truly,

WM. GRANT.

502 *Submission of case.—Extract from the minutes of June 3d*, 1878.

MARY ANN FISK
vs. } No. 8156.
CLAY GREEN ET ALS.

The trial of this cause was this day resumed, and after hearing argument the court took time to consider, three days being allowed counsel to submit briefs, and by consent of counsel the right is reserved to defendant to file nunc pro tunc a motion to suppress certain testimony.

Motion to suppress. Testimony W.—Filed June 19th, 1878.

M. A. FISK
vs. } No. 8156.
CLAY GREEN ET ALS.

Now comes Thomas J. Semmes and W. B. Lancaster, solicitors for Clay Green, and moves the court to suppress all the testimony introduced by complainants to shew fraud in bankruptcy proceedings or their nullity for want of jurisdiction in the court on account of residence, because—

503 1st. If the bankruptcy of Fisk is null for want of jurisdiction

or for fraud, it is not only the sale of half the property that is null but of the whole of it. In that case the defendant Green owns no interest whatever in it and cannot stand in judgment for a partition. The proof would go too far and be inconsistent with the prayer of petitioner.

2d. There is no allegation of either insufficient residence on the part of Fisk to give the bankrupt court jurisdiction nor of fraud in the proceedings. They cannot be proved without have been alleged.

3d. Bankrupt proceedings cannot be attacked for fraud more than two years after discharge, even in the court where they were had.

4th. They cannot be attacked at all in any other court for fraud.

5th. Plaintiff in this action is no creditor of bankrupt, and therefore has no right or interest the proceedings for fraud.

504 *Decree.—Entered & filed March 31st*, 1879.

MARY ANN FISK, PLAINTIFF IN EQUITY,
vs.
CLAY GREEN AND MILTON BENNER, DEFENDANTS.

Circuit court of the United States for the fifth judicial circuit and district of Louisiana.

This cause came on to be heard and was argued by counsel, and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, namely:

That Mary Ann Fisk, widow of Francis M. Fisk, be decreed the owner of all and singular an undivided half part share and interest in and to—

1st. A certain lot of ground, together with all the rights, ways, customs, privileges, servitudes thereunto belonging, or in any wise appertaining, situate in the first district of this city, in the square bounded by Poydras, Perdido, Rocheblane and Dorgenois streets, designated by the number one. Said lot forms the corner of Rocheblane and Poydras
505 street', and measures in American measure 28 feet 4 lines front on Poydras street, by a depth of 132 feet between parallel lines. Said property was acquired by said F. M. Fisk by purchase from F. Lacroix, by act passed before A. E. Bienvenu, not. pub., on May 28, 1866.

2d. Two certain lots of ground, with all the improvements thereon, rights, and privileges, situated in the fourth district of this city, bounded by Jackson, Josephine, Fulton, and Rousseau streets, designated by the numbers four and five on a plan made by Picquet and Crampton, late surveyors, and said lots adjoin each other, and measure each thirty-one feet five inches, and one line front on Jackson street, by a depth of 120 feet between parallel lines. The said lots form a part of a larger portion of ground sold by Samuel Livermore to Beverly Chew and others, in trust for a private association for the relief of "Destitute Orphan Boys," by act passed before C. Pollock, late a notary public in this city, on the 12th July, 1874.

506 3d. Four certain lots of ground, with all the buildings and improvements thereon, rights, ways, privileges, etc., situate in the fourth district of this city, in the square bounded by Jackson, Fulton, Josephine, and Rousseau streets, designated by the No'. 11, 12, 13, and 14, on a plan drawn by Picquet and Crampton, late surveyors, and deposited in the office of , notary public. Said lots adjoin each other, and have the following dimensions, viz: Lots Nos. 11, 12,

and 13 measure each 31 feet 5 inches and 1 line front on Josephine street, by 120 feet in depth, between parallel lines, and lot No. 14, forming the corner of Josephine and Fulton streets, measure 31 feet 7 inches and 6 lines front on Josephine street, by 120 feet in depth, and front on Fulton street. These lots form a portion of a large portion of ground originally sold by Samuel Livermore to Beverly Chew and others, in trust for the private association for the relief of "Destitute Orphan Boys'" Asylum, by an act passed before C. Pollock, late a notary public in this city, on the 12th of July, 1844.

507 4th. A certain lot of ground, with all the improvements thereon, situate in the first district of this city, in the square bounded by New Levee, Notre Dame, Girod, and Fulton, designated by the No. 10 on a plan known as the plan of J. A. Beard, duly certified by H. Graves on the 12th January, 1852, and deposited in the office of H. B. Cenas, late notary, for reference.

Said lot measures 32 feet 8 inches and 6 lines front on New Levee street, 23 feet 9 inches and 6 lines front on Fulton street, by a depth of 121 feet 7 inches and 5 lines on the line dividing it from lot No. 9, and 121 feet 9 inches and 1 line in depth, and front on Notre Dame street. Said property was acquired by F. M. Fisk by purchase from Henry Fassman by an act of sale passed before Geo. W. Christy, not. pub., in this city, dated 21st day of March, 1866.

5th. A certain lot of ground, together with all the rights, ways, privileges, etc., situate in the first district of this city, in the square bounded by New Levee, Notre Dame, Girod, and Fulton streets, designated

508 by the No. 9 on a plan known as the plan of J. A. Beard, duly certified by Hugh Grant, late a surveyor in this city. Said lot measures 23 feet 8 inches and 6 lines front on said New Levee street, and 23 feet 9 inches and 6 lines front on Fulton street, by a depth of 121 feet 6 inches and 1 line on the line which divides it from lot No. 8, and 121 feet 7 inches and 5 lines on the line which divides it from lot No. 10, American measure.

6th. A certain lot of ground situate in the first district of this city, in the square bounded by New Levee, Girod, Fulton, and Notre Dame streets, designated for the No. 8 on a plan of the batture known as the plan of J. A. Beard, deposited in the office of H. B. Cenas, late a notary public in this city. Said lot measures 23 feet 8 inches and 6 lines front on New Levee street, 23 feet 9 inches and 6 lines front on Fulton street by a depth of 121 feet 4 inches and 5 lines on the side of lot No. 7,

509 and 121 feet 6 inches and 1 line on the side of lot No. 9, all American measure.

And the court doth further adjudge and decree that the matters herein be referred to J. W. Gurley, esq., master, to proceed to a partition according to law under the direction of the court.

March 31st, 1879.

EDWARD C. BILLINGS, *Judge.*

Petition for a rehearing.—Filed April 8th, 1879.

U. S. circuit court.

MRS. M. A. FISK *versus* CLAY GREENE. } No. 8156.

The petition of Clay Greene respectfully shows that the decree herein

rendered is contrary to law, and the evidence in this that the only question in this matter that could be entertained by this court is: Did the bankrupt court have jurisdiction? If so: if the United States
510 district court of Brooklyn really had jurisdiction, ratione personae et materiae; if Mr. Fisk's residence was such as to give it jurisdiction of his bankruptcy, and if his bankruptcy could include community property, then this court has no possible jurisdiction over the proceedings of that court for the purpose of annulling them.

Petitioner does not reopen the question of a divorced husband's right to liquidate the community affairs of his dissolved marriage through proceedings in bankruptcy. He assumes that this court, in view of the authorities cited in his brief, concedes that position.

As to the jurisdiction of the bankrupt court ratione personae, petitioner avers that the record discloses no reason to doubt it. The presumption is in favor of the regularity of the proceedings, and the burden of proof must fall on him who attacks it. There is no such proof in this case.

The only attempt towards it is in the testimony of F. M. Fisk, jr., (page 379) where he says that his father (the bankrupt) did not
511 start from Mississippi for New York until about the 1st of August, 1871, and it is in proof that he filed his proceedings in bankruptcy in Brooklyn on the 27th of December following. This is consistent with the presumption of residence during four months and a half, certainly time enough to meet the requirements of the bankrupt law.

But the court may have been moved by the suggestion of fraud, and if so, this petitioner avers error therein for the following reasons, viz:

First. There is no averment in plaintiff's pleadings of fraud and simulation, and there is no evidence thereof before the court, for, though it was attempted to introduce such evidence, this petitioner's counsel moved in due season to suppress it, as per motion, marked "W," is appended to this petition for reference (page 502). This petitioner avers that, had the issue been made in the pleadings, he could have proved affirmatively the bankrupt's full and sufficient residence to give
512 jurisdiction as well as the fact of his actual insolvency.

Second. A simulated bankruptcy is an impossibility, unless we implicate the court in the charge. A simulated contract is when all the contracting parties know it to be a sham; if one of them does not know and consent to that, then it is a real contract. And so with bankruptcy; it could not be a simulation or sham without the concurrence and consent of the court and its officers, for if they should understand the assignment as serious, the bankrupt could never be permitted to question it. (Bouvier, verbo Simulation.)

Third. Neither can a bankruptcy be held a fraud through any fraud of the bankrupt alone, however aggravated his conduct; for a bankruptcy, technically speaking, is a judicial proceeding—it requires the concurrence of a court. Whatever the motives of the party, the bona fide action of the court must be held unimpeachable until duly annulled by itself. Whatever the fraud of the bankrupt, it is only his dis-
513 charge that will be annulled; if sales have taken place they will not be affected, nor will any distribution of assets.

Petitioner avers that this principle is recognized familiarly in probate sales. If a representative person, executor or administrator, obtains an order of sale from a court of actual and competent jurisdiction, the purchaser need not look beyond the decree. Any antecedent fraud of the administrator in magnifying the debts—in being actuated by a malicious

wish to ruin the heirs, or otherwise—can have no effect if the sale be once completed. Otherwise there would be no safety in such titles, and no authority in order of the court.

And the same thing must be predicated of bankrupt sales. It is immaterial whether the property sold be exclusively that of the bankrupt, or partly assigned by him in a representative capacity; provided—which we have already taken for granted above—that he has the power to assign it.

514 The malice and fraud of his motive cannot oust the jurisdiction of the court, for no jurisdiction is dependent on such hidden and intangible influences. If the party represented by him is about to be defrauded, it is that party's business—just as with the heirs in a probate sale—to inform the court of the fraud and prevent the sale.

In the case now before this court your petitioner is utterly unconnected with any fraud, if such there have been, which petitioner does not believe. But even if there have been, this petitioner, purchaser from the assignee, had no participation whatever in it, and ought not to be affected by it unless it actually destroyed the jurisdiction of the bankrupt court.

Fourth. There is in this case no equity in favor of plaintiff as against the purchaser (this petitioner), because she permitted between four and five years to elapse between the date of Mr. Fisk's assignment and the sale by the assignee, without intervening or opposing, whereas during all that time the property was notoriously and to her knowledge

515 in the possession of the assignee. Such laches would make her a party to the fraud on the purchaser, if such there were.

Again: There is manifest error in this, that an important portion of the property in contest is claimed by this petitioner through his purchase from E. W. Foster, as per act of 9th March, 1876, before W. J. Castell, notary, which is on file in this record, marked C, and is annexed to this petition. That title has not been impeached in any manner, and is derived from a tax sale.

Wherefore petitioner respectfully prays for a rehearing of this cause, and for general relief.

(Signed) T. J. SEMMES,
(Do.) ROBERT MOTT,
(Do.) W. B. LANCASTER,
Of Counsel.

516 *Submission of petition for a rehearing.—Extract from the minutes November term*, 1878.

NEW ORLEANS, *Tuesday, April 8th*, 1879.

Court met pursuant to adjournment.
Present, Hon. E. C. Billings, district judge.

MRS. M. A. FISK
vs. } No. 8156.
CLAY GREEN ET ALS.

Thos. J. Semmes, esq., attorney for defendants, this day presented to the court a petition for a rehearing.

Order rehearing refused.—Extract from the minutes, April term, 1879.

NEW ORLEANS, *Wednesday, May 7th*, 1879.

Court met pursuant to adjournment.

Present, Hon. Edward C. Billings, district judge.

MRS. M. A. FISK
vs.
CLAY GREEN ET ALS. } No. 8156.

On due consideration of the application for a rehearing and the
517 argument of counsel thereon, the court perceives no reason to disturb the decree heretofore rendered in this cause. It is therefore ordered that a rehearing be refused.

Motion and order for appeal.—Entered and filed June 9th, 1879.

MARY ANN FISK
vs.
CLAY GREEN & AL. } No. 8156.

On motion of Thos. J. Semmes and W. B. Lancaster, solicitors for the defendant, Clay Green, and on suggesting that there is error to his prejudice in the final decree herein rendered on the 31 March, 1879, and they are desirous to appeal therefrom suspensively, it is ordered that an appeal, to operate as a supersedeas, be allowed him from said final decree on giving bond in the sum of three thousand dollars ($3,000), with Richard Rhodes as surety, who is accepted by the court as
518 such, returnable to the Supreme Court of the United States on the 2d Monday of October, 1879.

Bond for appeal.—Filed June 9th, 1879.

UNITED STATES OF AMERICA:

Know all men by these presents, that we, Clay Green, principal, and Richard Rhodes, surety, are held and firmly bound, jointly and severally, unto Mrs. Mary Ann Fisk in the sum of three thousand dollars, lawful money of the United States of America, to be paid to the said Mrs. Mary Ann Fisk, her heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals and dated the ninth day of June, in the year of our Lord eighteen hundred and seventy nine.

Whereas the said Clay Green having heretofore, to wit, on the ninth day of June, 1879, taken an appeal to the Supreme Court of the
519 United States from and to reverse the decree rendered on the thirty-first day of March, 1879, by the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, in the suit of Mary Ann Fisk versus Clay Green et al., No. 8156 of the docket thereof:

Now, the condition of the above obligation is that if the above bounden Clay Green shall prosecute said appeal to effect and shall answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) CLAY GREEN.
Per W. B. LANCASTER, *Att'y.* [L. S.]
(Signed) RICHARD RHODES. [L. S.]

520 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE:

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify, that the foregoing 519 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Mary Ann Fisk vs. Clay Green et al., No. 8156 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 12th day of Sept'r, A. D. 1879.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the district of Louisiana, do certify, that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 12th day of Sept'r, A. D. 1879.

EDWARD C. BILLINGS, *Judge.*

521 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Mary Ann Fisk, widow of Francis M. Fisk, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a motion and order for appeal, entered & filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, in the suit wherein you are complainant and appellee, and Clay Green is the defendant and appellant, to show cause, if any there be, why the decree rendered against the said Clay Green as in said motion for appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 9th day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

EDWARD C. BILLINGS, *Judge.*

522 (Indorsed:) United States circuit court. No. 8156. Mary Ann Fisk vs. Clay Green et al. Citation.

Marshal's return.

Received Jun. 16, 1879, by the U. S. marshal, and on June 18th, 1879, I served a true copy of the within motion and order for appeal on Mary Ann Fisk, "widow of Francis M. Fisk," claimant and appellee, by

handing the same to Joseph P. Hornorby, her attorney, in person, in the city of New Orleans, and district of Louisiana, the said Mary Ann Fisk being absent from the district of Louisiana at the time of service.

E. S. CURRY,
D'y U. S. Marshal, District of Louisiana.

On the 23d day of June, 1879, personally appeared before me E. S. Curry, a deputy United States marshal for the district of Louisiana, and makes oath that he served a true copy of the within motion and order for appeal on Mary Ann Fisk, widow of Francis M. Fisk, claimant and appellee, as stated in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal, District of Louisiana.

Sworn to and subscribed before me this 23d day of June, 1879.

F. B. VINOT,
U. S. Comm'r.

(Indorsement on cover:) No. 561. Clay Green, appellant, vs. Mary Ann Fisk, widow of Francis M. Fisk. Louisiana C. C. U. S. Filed 7th October, 1879.

In the Supreme Court of the United States.

October Term, 1880.

CLAY GREEN, Appellant,
vs.
MARY ANN FISK. } *No.* 561.

The appellee, Mary Ann Fisk, moves the court to dismiss the appeal in this case for want of jurisdiction, and also to affirm the decree on the ground that, although the record may show this court has jurisdiction, it is manifest the suspensive appeal was taken for delay.

DURANT & HORNOR,
for Motion.

IN THE SUPREME COURT OF THE UNITED STATES.
October Term, 1880.

CLAY GREEN, Appellant,
vs.
MARY ANN FISK, widow of Francis M. Fisk. } *No.* 561.

This is a suit for partition originally brought in the fourth district court of New Orleans, and transferred to the circuit court of the United States for Louisiana by the appellant, Clay Green. He resisted the suit on two grounds, viz: *First.* Because he was the sole owner of the property sought to be partitioned; and, *Second.* Because Widow Fisk was entitled

to no part of her husband F. M. Fisk's property, the said husband having surrendered to his creditors in bankruptcy in the State of New York all his property, including in this surrender all the property now claimed by the widow, which was sold by the assignee in bankruptcy to pay community debts, if any such existed. That under this sale Clay Green, the respondent, acquired full and sole ownership of the property sued for. He prays that the demand of Mary Ann Fisk be rejected, and that he have judgment against her, decreeing his title to the whole of said property to be good and valid, and the ownership thereof to be in him, and for general relief.

Record, p. 13.

The decree established the ownership of Mary Ann Fisk of an undivided half-part share and interest in and to the real property set forth in her petition, and "the matters herein be "referred to J. W. Gurley, Esq., master, to proceed to a "partition according to law, under the directions of the "court."

Record, pp. 183, 184.

From this decree Clay Green has appealed *suspensively*.

History of the Case.

Mary Ann Fisk was married to Francis M. Fisk, June 27, 1842, in the city of New Orleans.

Rec., p. 16.

October 22, 1868, the wife sued the husband for a divorce. (P. 14.) The suit was tried by a jury, and the verdict and judgment were in favor of plaintiff and an absolute divorce granted; and it was farther decreed that she recover from

her said husband one-half of all the property acquired by her said husband and belonging to the community since June 27, 1842, with the fruits and revenues thereof after the rendition of this judgment.

Record, p. 154, at top.

May 15, 1871, a public inventory was made of the community property, in which is displayed the real estate of which Mary Ann Fisk was thus decreed to be half-owner.

Rec., pp. 18 to 33.

September 5, 1871, the widow petitions for the cancellation and erasure of certain simulated and fictitious mortgages placed on the registry or allowed to remain there "for the "purpose of destroying her one-half of the community."

Rec., pp. 16–17.

[This suit was transferred to the second district court, and was afterwards dismissed for want of jurisdiction.]

Rec., p. 33, middle, p. 41, at top.

December 27, 1871, Francis M. Fisk became a voluntary bankrupt in the city of Brooklyn, New York.

Rec. p. 96, 123.

February 7, 1872, Charles W. Goddard was appointed assignee.

P. 107.

July 20, 1872, the requisite proceedings had, the assignee having neither "received nor paid any moneys on account "of the estate, except his necessary disbursements as such

" assignee," (p. 119,) the bankrupt "was forever discharged " from all debts and claims," &c.

P. 120.

December 12, 1874, Francis M. Fisk died in New Orleans, where his succession was opened December 15, 1874.

Rec., p. 41.

The proceedings show that at this time a large amount of property, movable and immovable, still stood in his name and was treated as his, notwithstanding his bankruptcy; the presumption of law is that it all belonged to the assignee in bankruptcy and the widow, and liable, *first*, to the debts of the community, if any; and, *secondly*, that portion originally belonging to F. M. Fisk, in which his widow had no interest, subject to F. M. Fisk's own debts, if any. At this point of time Clay Green attempts to become the owner of all the properties involved, in the manner following:

July 14, 1875, Milton Benner, for the alleged consideration of $5,500, transfers to Fisk's assignee, Charles W. Goddard, the New Levee-street property. The act was not executed until February 8, 1877, and registered the next day.

Rec., p. 79 *et seq.*

March 9, 1876, E. W. Foster, for the consideration of $150, sells to Clay Green his tax-title to two lots known as the Fulton-street property, Nos. 8 and 9.

Rec., p. 81.

April 6, 1876, Charles W. Goddard, assignee in bankruptcy, sells to Clay Green, for the consideration of $650,

all the right, title, and interest of the bankrupt, Francis M. Fisk, in and to

Two lots of ground, known as Nos. 2 and 3, Fulton-street property.

Four lots of ground, known as Orphan Asylum lots.

Two lots of ground, known as the Fulton-street property, lots 8 and 9.

One lot of ground, known as corner Rocheblave and Dorgenois streets.

One lot of ground, known as the Notre-Dame-street property.

The deed is on Rec., pp. 76, 77.

December 16, 1876, the suit of Mary Ann Fisk *vs.* Her Husband, to which Ann E. Green, as testamentary executrix, had been made a party, (Rec., p. 33,) was dismissed on her exceptions for want of jurisdiction by the second district court.

Rec., p. 41.

January 29th, 1877, the present suit was instituted.

Record, p. 1.

The evidence shows the following facts, viz:

First. That being the owner in community with his wife, of a large amount of valuable real estate in the city of New Orleans, in order to avoid the payment of the alimony, and the partition of his property thus held in community, necessarily following on the verdict and judgment of divorce, Francis M. Fisk, after committing contempts of court and undergoing imprisonments therefor, went to Brooklyn, New York, and after a sojourn there went into bankruptcy,

obtained his discharge, and returned and resumed his residence in Louisiana, with full control of all his property, collecting and disbursing the revenues, and acting as owner thereof, but armed at the same time with a power of attorney from the assignee in bankruptcy, under which he acted "until his death."

Testimony of Benner, Rec., pp. 131 to 133.
Washburne, Rec., pp. 133 to 138, 140, 141.

Second. The same witnesses show that the assignee in bankruptcy was the agent of the bankrupt up to the time of F. M. Fisk's death. And they make it presumable that he was afterwards the agent of Clay Green and his mother, Anne E. Green, testamentary executrix of Francis M. Fisk.

Third. That the fraud perpetrated on his divorced wife by F. M. Fisk was continued and carried out by Clay Green, by means of which he has obtained the possession and seeming title to all the community property belonging to Francis M. Fisk and Mary Ann Fisk, his wife.

Fourth. That Ann E. Green is the daughter by first marriage of F. M. Fisk, and Clay Green is her son. The antagonism between these and the present appellee clearly appears in the testimony of the above-named witness, Washburne.

Fifth. F. M. Fisk owed but little money. (135.) His debts never troubled the testamentary executrix (136) or her agent. On May 21, 1878, the agent says, "there has "been nothing to do lately," (139,) though he is very reticent and secretive in his testimony.

ARGUMENT.

We summarize the defence from Rec., p. 184, on the motion for a rehearing.

FIRST. That the United States district court for the eastern district of New York had jurisdiction in all the matters of Francis M. Fisk's bankruptcy.

SECOND. That the proceedings in bankruptcy were not fraudulent or simulated:

(*a.*) Because there is no allegation of fraud or simulation in the pleadings, and no proof of them, except such as defendant has moved to suppress.

(*b.*) Because a simulated bankruptcy is impossible; for it cannot take place without the concurrence and consent of the court and its officers. If these considered the assignment as serious, the bankrupt could never be permitted to question it.

(*c.*) Because even with fraud in the bankrupt the proceedings are valid until annulled by the bankrupt court; the fraud affecting only the discharge, leaving sales of the property and distribution of the proceeds and assets unaffected.

(*d.*) Because Clay Green is entirely unconnected with the fraud, if any; and if there has been fraud, he is a *bona fide* purchaser from the assignee, and not to be affected thereby unless it actually destroyed the jurisdiction of the bankrupt court.

(*e.*) Because no equity exists in plaintiff, on account of her delay and laches, allowing between four and five years to elapse between the bankrupt's assignment and assignee's sale without intervening and opposing, whilst all that time the

property was notoriously, and to her knowledge, in the possession of such assignee.

THIRD. Because the tax-title to one of the lots was not recognized.

Record, pp. 184, '5, '6.

I.

On the question of jurisdiction, we admit at once that so far as F. M. Fisk, the alleged bankrupt, is concerned, the court in New York was fully competent. But we aver that so far as Mary Ann Fisk, his divorced wife, is concerned, the inquiry seems irrelevant in the *first* place; and in *the second*, she not being a party in any way to the bankruptcy proceedings, either actually or constructively, as to her they are *absolutely void*.

Ray *vs.* Norsworthy, 23 Wall., 128.

But our admission must not be misconstrued. As the bankrupt proceedings now stand, they must have their full legal effect. They cannot be collaterally overthrown and annulled. Whether the judge before whom they were carried on would not, on a hearing in proper form with all the facts before him, order the whole proceeding to be stricken from his records, need not be inquired into now. So far as Mrs. Widow Fisk is concerned these bankrupt proceedings are irrelevant, for her rights were acquired, vested rights, before any jurisdiction vested in the bankruptcy court. The community between her and her husband had been dissolved by a prior definitive judgment of a State court of the domicile of the parties. The real estate was governed by the *lex rei sitæ*. The wife was not a bankrupt, and had never been so declared. The bankruptcy court

never undertook to settle the community; and it would have been a singular and illegal interference with the jurisdiction of the State court had such a proceeding been undertaken. The interests of the husband and wife were distinct and determined; the unity of the marriage was destroyed; Mary Ann Fisk was not only an independent *sui juris* person, but an utter stranger to the bankrupt. True, she was a co-owner with him in certain real estate, and perhaps a creditor; but if a creditor, it was a creditor with privilege and judicial mortgage on her late husband's property, and it depended upon her will alone whether or not, as creditor, she would take part in the bankruptcy proceedings. The law left the solution of this question to her free choice, and she exercised it by refraining from taking any part therein.

But this case was tried as an equity suit. (P. 131.) The partition sued for by the complainant was resisted on the ground that the defendant was sole owner of the property by virtue of his purchase from the assignee of F. M. Fisk. This sole ownership was *implicitly* denied.

The issue between the plaintiff and the defendant was thus very sharply and distinctly defined. The plaintiff claimed an undivided half of certain property, of which the defendant claimed the whole.

The right of plaintiff was established by the final verdict and judgment of the State court, October 22, 1868.

This judgment is *res judicata* as to F. M. Fisk and his privies, of whom Clay Green is one.

F. M. Fisk never could and never did assign to his creditors any portion of this one undivided half, but only "all "the rights, title, and interest which the said F. M. Fisk "had at the time of the filing of his petition aforesaid," (December 27, 1871.) This was all that Clay Green could by possibility acquire by his purchase-deed from the assignee (Rec., p. 7) under the bankruptcy laws.

The defence is manifestly frivolous, and the appeal taken for delay.

Ray *vs.* Norseworthy, 23 Wall., 128.

A semblance of reliance is also placed by the defendant and appellant on a tax-sale to him by E. W. Foster of Fisk's "interests" in two lots of ground. But a perusal of the deed will show that it was not intended, and does not import in any way, to sell the property itself, but only F. M. Fisk's interests in it. By itself it is no evidence against Fisk *á fortiori* as to Mary Ann Fisk and her interests in and to the property.

II.

Mary Ann Fisk now moves to dismiss or affirm under Rule 6 and amendment.

First. The decree below is neither definitive nor final, and lacks the elements of the thing adjudged. *First.* No execution of it can be awarded. *Second.* It works no irreparable injury, and is still under the full control of the court *á quâ*. *Third.* If appeal be sustained, it may lead to a multiplication of appeals. *Fourth.* Many questions of right are still left open to the parties. *Fifth.* The case on the record is a suit for a partition, and no partition has yet been made or even decreed.

Perkins *vs.* Fourniquet, 6 Howard, 208.
Craighead *vs.* Wilson, 18 Howard, 199.
Beebe *vs.* Russell, 19 Howard, 283.
Pullian *vs.* Christian, 6 Howard, 209.
Humiston *vs.* Stainthorp, 2 Wall., 106.

Second. For the reasons above adduced in argument the

appeal from decree below is manifestly taken for delay only, and should be affirmed.

Respectfully submitted.

DURANT & HORNOR,
Atty's for Appellees.

WASHINGTON, D. C., *February* 11, 1881.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1880.

No. 561.

CLAY GREEN, APPELLANT,

versus

MARY ANN FISK, APPELLEE.

Brief of Appellant on Motion to Dismiss and Affirm.

THOS. J. SEMMES.

Hyatt, Print, 73 Camp St. N O—18,925.

SUPREME COURT OF THE UNITED STATES.

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Brief of Appellant on Motion to Dismiss and Affirm.

First—A decree is final when it ascertains the right of the parties; the appellant, who was defendant in the court below, based his refusal to assent to a partition on the ground that he was *sole owner of the property*.

That was the only issue raised in the case; that issue was decided against the appellant

The execution of that decree was referred to the master, and his acts in carrying the decree into effect are ministerial in their character.

Chancellor Kent, in discussing a similar question, says: "The appeal is from the decretal order directing an account to be taken, and prescribing rules and principles by which the master is to take it. This direction does, in fact, involve the merits of the controversy between the parties, and I have no doubt it was an order on which an appeal might be brought."

Green vs. Winter, 1 John, Ch. R. 77-81.

Meadows vs. State, 7 Caldwell, 416.

In Alabama, where appeals are only allowed from final decrees, the court determined when the decree of a Chancellor

ascertains and settles the rights of the parties, it is so far final as to sustain a writ of error.

The Court say: "It is important that litigation should end as soon as the merits of a case are ascertained or a point reached, which decides the principle which must govern it. Thus, if the opinion of the Chancellor is erroneous, the delay, expense and trouble attending the ascertainment of facts preparatory to an account, are unnecessary and profitless.

Kenndey's Heirs, 2 Ala. 471.

Bank Mobile vs. Hall, 6 Ala. 141.

The rule is, that although consequential directions, depending on the result of the proceedings are given in the decree, it is final.

Stoval vs Banks, 10 Wall. 586.

Mills vs. Hoag, 7 Paige, 18.

Johnson vs. Everett, 9 Paige, 636.

In this case, the petition for partition alleged that the property was not divisible in kind, and therefore a sale was necessary, and concluded with a prayer for sale—p. 2.

So that the decree, unless its execution had been arrested, would have resulted in a sale before the partition could have been completed: thus, if our contention is correct, the property, of which we claim to be sole owners, would have been sold, and our title divested, before we could obtain a reversal of the decree in this court.

Second—The motion to affirm the decree cannot prevail, because serious questions of law and fact are involved in the case.

The defendant, Clay Green, claims title by virtue of a purchase from the Assignee in Bankruptcy of F. M. Fisk, who made a voluntary surrender on 27th December, 1871.

This title is attacked by the complainant on various grounds.

First—That the Bankrupt Court in Brooklyn had no jurisdiction to adjudge F. M. Fisk a bankrupt.

This ground is abandoned in the brief filed by the appellee.

Second—That the proceedings in bankruptcy were fraudulent and simulated; the fraud, it is alleged, consisted in an effort of Fisk to deprive his divorced wife of her interest in the community property, through the medium of the Bankrupt Court.

There is no allegation in the petition, which, after removal from the State Court, was treated as a bill of complaint, to justify the introduction of any testimony on the subject of fraud. The petition proceeds, on the ground of joint ownership, and does not in the most remote manner present any issue of fraud.

On that ground and others, the appellant made a motion in the Court below, to suppress all testimony in regard to fraud or the jurisdiction of the Bankrupt Court—pp. 182-3.

It is clear the motion to suppress testimony should have prevailed, especially as Clay Green was in no manner implicated in the alleged misconduct of F. M. Fisk.

Third—F. M. Fisk having made his surrender in Bankruptcy in 1871, died in 1874.

The title of Fisk to the real estate in question was, by his surrender in Bankruptcy, transferred to the assignee appointed by the Bankrupt Court.

The complainant claims one-half of the property thus surrendered, by virtue of the law of Louisiana, which establishes a community of property between husband and wife.

This involves a consideration of the laws of Louisiana on the subject of community.

It is true that on the 27th of June, 1871, a judgment was rendered in the State court whereby Fisk was divorced from his wife, and the community was dissolved—p. 414. On the 27th of December, 1871, Fisk made his surrender in Bankruptcy.

This surrender transferred all of Fisk's property to the Bankrupt Court, to be there liquidated; the community rights of the wife are contingent and dependent on ultimate liquidation: in this respect they have no resemblance to the right of dower, which is an absolute right of property, and becomes vested in possession on the death of the husband.

The case of Phelan vs. Ax, 25 La. An. p. 379, is a direct authority in support of the contention of the opponent as to the effect of the surrender in Bankruptcy made by Fisk in 1871.

In that case Phelan, after the death of his wife, made a surrender to his creditors under the State law. The community was, of course, dissolved by the death of the wife.

The property was sold by the Syndic in 1865.

Subsequently, the minor children of Phelan, as heirs of their mother, brought suit against the purchaser for a partition, on the ground that the Syndic's sale vested in the purchaser a title to only one-half of the property.

The Court held, on the authority of a previous case decided in 1841, that the representatives of a deceased wife, although their distinct interest in the community attaches at the dissolution of the marriage, subject to their right to renounce and to be exonerated from the payment of the community debts, have nothing to claim out of the acquets and gains until such debts are paid or liquidated. The authority referred to is Lawson vs. Ripley, 17 La. 247.

In Hawley vs. Wells, 26 La. An. 232, the Court, say: "Upon "the dissolution of the community, by the death of the wife, the "responsibility of the husband, in regard to the community "debts is not changed. He is absolutely and personally bound "for their payment. * * * The community "property continues under his control, until the debts are paid. "Until their final settlement and discharge, the heirs have no abso- "lute right to the property of the community that can be legally "recognized. Their interest in it continues contingent and

"uncertain, until by the result of the final discharge from the "obligations of the community, it is known whether or not "there are assets remaining for partition between the survivor "and the heirs of the deceased spouse."

See, also, Riley vs. Condron, 26 La. An. 294; and Ricker vs. Pearson, Id. 391.

There is no difference in principle, whether the dissolution of the marriage, and consequent dissolution of the community, is produced by the death of either spouse or by divorce. The rights of the parties in interest are the same.

Fourth—The Bankrupt Court having jurisdiction to order a sale, it is too well settled to cite authority that a purchaser is not bound to look beyond the decree of the Court for his protection, especially when there is no allegation of fraud on his part.

Fifth—A court of equity has no jurisdiction to entertain a suit for partition, when the question of title is in dispute.

Riverview Co. vs. Turner, 24 N. J. Eq. 18.

C. E. Green, 215.

Slade vs. Barlow, L. R. 7 Eq. 296.

Lord Hatherly says, it is not proper for a court of equity, "under color of making a decree for partition, in fact, to decide the legal right to the land."

Gifford vs. Williams, L. R. 5 Ch., App. 546.

See also, 3 Iredell. Eq. 13.

8 Iredell. Eq. 25.

24 Connecticut, 230.

When such questions as these are presented to the court, I presume they will not be disposed of on a motion to affirm the decree of the court below, under the operation of the amendment to rule sixth, promulgated in November, 1878.

Respectfully submitted,

THOS. J. SEMMES.